

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION Nos.78 and 116 of 2018

COMMON ORDER:

Transfer Criminal Petition No.78 of 2018 is filed requesting the Court to withdraw and transfer C.C.No.502 of 2014 from the Court of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam to the Court of Chief Metropolitan Magistrate, Vijayawada, to be tried alongwith C.C.No.440 of 2016.

Transfer Criminal Petition No.116 of 2018 is filed requesting the Court to withdraw SC.No.90 of 2016 from the Court of XIII Additional District and Sessions Judge, Vijayawada, Krishna District, and transfer the same to the Court of any District and Sessions Judge/Metropolitan Sessions Judge, Visakhapatnam or any other competent Court outside Krishna District.

The petitioners in both the Transfer Criminal Petitions are different.

The petitioner in Transfer Criminal Petition No.78 of 2018 filed complaint on 23.12.2013 alleging that the 2nd respondent therein and others have obtained from him by force certain cheques and obtained signatures on the said blank cheques. There are disputes between him and the 2nd respondent therein with respect to business concern. The said complaint was registered as FIR No.855 of 2013 for the offences punishable under Sections 384 and 506 read with 34 IPC.

On the complaint made by V.Srinivasa Rao-6th respondent in Transfer CrI.P.No.78 of 2018, a case in Cr.No.506 of 2014 was registered for the offences punishable under Sections 385 IPC, 195A IPC and 506 read with 34 IPC. After completion of investigation, police filed

charge-sheet and the same was registered as C.C.No.440 of 2016 and is pending on the file of Chief Metropolitan Magistrate, Vijayawada.

The petitioner-Vura Sinivasa Rao in Transfer Criminal Petition No.116 of 2018, who is the 6th respondent in Transfer Criminal Petition No.78 of 2018, is the defacto-complainant, who lodged a complaint with the police alleging that on 03.12.2013 he was kidnapped by A1 and others and obtained certain documents from him by using force and thereafter utilized those cheques for filing complaints before different courts. It is submitted that A1 is a noted criminal and businessman in the Vijayawada Town and the other accused are his strong supporters. Due to threat and harassment of accused, he is not in a position to go to Vijayawada to give evidence. Therefore, he filed Tr.Cr.P.No.116 of 2018 requesting to withdraw S.C.No.90 of 2016 from the Court of XIII Additional District and Sessions Judge, Vijayawada, Krishna District, and transfer the same to the Court of any District and Sessions Judge/Metropolitan Sessions Judge, Visakhapatnam or any other competent Court outside Krishna District.

The defence set up by the petitioners and the accused are one and the same.

In C.C.No.502 of 2014 and C.C.No.440 of 2016, the witnesses to be examined on behalf of prosecution as well defence are one and the same. The aforesaid two cases are pending in different Courts i.e., C.C.No.502 of 2014 is pending in the Court of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam and C.C.No.440 of 2016 is pending in the Court of Chief Metropolitan Magistrate, Vijayawada.

To avoid conflicting judgment and to avoid inconvenience, the petitioner sought transfer of C.C.No.502 of 2014 from the Court of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam to the Court of Chief Metropolitan Magistrate, Vijayawada, to be tried along with C.C.No.440 of 2016.

M/s.Omni Enterprises filed a complaint for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act, which is the subject matter of C.C.No.502 of 2014 against the petitioner in Tr.Cr.P.No.78 of 2018, who is arrayed as 2nd accused in the above C.C. alleging that cheques were issued by 2nd accused on behalf of 1st accused towards discharge of legally enforceable debt and on presentation of the same for collection, the same were dishonoured and thereafter in strict adherence to proviso (b) (2) of 138 of NI Act, a legal notice was issued calling upon the petitioner in Tr.Cr.P.No.78 of 2018 and other accused to pay the amount covered by dishonoured cheque within 15 days. But, the legitimate demand was not complied with. Therefore, Omni Enterprises filed complaint.

The Station House Officer, L&O Ibrahimpatnam Police Station filed charge-sheet against Koganti Satyanarayana @ Satyam, S/o.Ramayya, Tekyam Shyam Sunder Rao @ Shyam, S/o.late Ramana, Bathula Rama Rao, S/o.Appa Rao, Desetti Babu Rao, S/o.Adinarayana and Buduri Kesava Rao @ Kesava Reddy S/o.Vijaya Raghava Rao, for the offences punishable under Sections 364, 341, 323, 506, 143 read with 149 IPC, which is the subject matter of Cr.No.1033 of 2013 of II Town Police Station, Vijayawada, which on completion of investigation and filing of charge-sheet was numbered as C.C.574 of 2014 on the file of Chief Metropolitan Magistrate,

Vijayawada, Krishna District, and the same was committed to the Court of Sessions and registered as S.C.No.90 of 2016 and pending on the file of XIII Additional District and Sessions Judge, Vijayawada, Krishna District.

The 6th respondent in Tr.Criminal Petition No.78 of 2018 filed Tr.Criminal Petition No.116 of 2018 for withdrawal of S.C.No.90 of 2016 from the Court of XIII Additional District and Sessions Judge, Vijayawada, Krishna District, and to transfer the same to the Court of any District and Sessions Judge/Metropolitan Sessions Judge, Visakhapatnam or any other competent Court outside Krishna District.

In Transfer Criminal Petition No.78 of 2018, respondents 2 to 4 filed counter affidavit denying the material allegations inter alia contending that there are no disputes between petitioner and respondents 5 and 6 and the petitioner has foisted false case against respondents 2 to 4. It is further stated that C.C.No.502 of 2014 has nothing to do with C.C.No.440 of 2016 and therefore, there is no need for clubbing and trying both the cases together.

As seen from the allegations made in both the CCs., the petitioner and respondents are known to each other having acquaintance since long time but due to differences or disputes, Vura Sinivasa Rao (the petitioner in Transfer Criminal Petition No.116 of 2018, who is the 6th respondent in Transfer Criminal Petition No.78 of 2018) was allegedly kidnapped by Koganti Satyanarayana @ Satyam, S/o.Ramayya, Tekyam Shyam Sunder Rao @ Shyam, S/o.late Ramana, Bathula Rama Rao, S/o.Appa Rao, Desetti Babu Rao, S/o.Adinarayana and Buduri Kesava Rao @ Kesava Reddy S/o.Vijaya Raghava Rao and allegedly obtained signatures on blank papers and

also on cheques. Taking advantage of those blank cheques, the respondents got filed private complaints for the offences punishable under Section 138 of NI Act and the petitioner in Tr.Crl.P.No.116 of 2018 lodged a report and after conducting investigation, the police filed charge-sheet against respondents, which was initially registered as C.C.574 of 2014 on the file of Chief Metropolitan Magistrate, Vijayawada, Krishna District, and the same was committed to the Court of Sessions and numbered as SC.No.90 of 2016 and pending on the file of XIII Additional District and Sessions Judge, Vijayawada, Krishna District.

The petitioner in Tr.Crl.P.No.78 of 2018, who is A2, representing A1-M/s.Kamakshi Steels Private Limited, filed Transfer Criminal Petition No.78 of 2018 requesting the Court to transfer C.C.No.502 of 2014 from the Court of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam to the Court of Chief Metropolitan Magistrate, Vijayawada, to be tried along with C.C.No.440 of 2016.

The petitioner in Tr.Crl.P.No.78 of 2018 also set up an identical defence.

The petitioner in Tr.Crl.P.No.116 of 2018 sought withdrawal of SC.No.90 of 2016 from the Court of XIII Additional District and Sessions Judge, Vijayawada, Krishna District, and to transfer the same to the Court of any District and Sessions Judge/Metropolitan Sessions Judge, Visakhapatnam or any other competent Court outside Krishna District.

Telaprolu Ram Prasad (petitioner in Tr.Criminal Petition No.78 of 2018) is a resident of Vijayawada whereas Vura Sinivasa Rao (petitioner in Tr.Criminal Petition No.116 of 2018) is a resident of Visakhapatnam.

Respondents 1 to 5 in Tr.Crl.P.No.116 of 2018 are residents of Vijayawada.

The witnesses proposed to be examined in S.C.No.90 of 2016, which is the subject matter of Tr.Crl.P.No.116 of 2018, as per the list of witnesses annexed to the charge-sheet, LWs.1 and 2 are residents of Visakhapatnam whereas LWs.3 to 9 are residents of Vijayawada. The investigation was taken up by the Sub-Inspector of Police, Ibrahimpatnam Law & Order Police Station. Except the defacto-complainant and the car driver of the of the defacto-complainant, all others are residents of Vijayawada.

Similarly, accused 1 and 2 in C.C.No.502 of 2014, which is the subject matter of Transfer Criminal Petition No.78 of 2018, are residents of Vijayawada, whereas the complainant M/s.Omni Enterprises represented by its proprietor Narayana Kumar Narasaria is a resident of Visakhapatnam, and the witnesses proposed to be examined are the Branch Manager, Axis Bank, Visakhapatnam and the Branch Manager, Karur Vysya Bank Limited, Vijayawada.

The counsel appearing for respondents during hearing brought to the notice of the Court that entire trial in C.C.No.502 of 2014 is completed and contended that when the entire trial is completed, the question of withdrawing and transferring C.C.No.502 of 2014 from the Court of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam, and trying alongwith C.C.No.440 of 2016 does not arise.

As per the submission made by the learned counsel for respondents, the entire trial in C.C.No.502 of 2014 pending on the file of III Additional Chief Metropolitan Magistrate, Gajuvaka, is

completed except examination of accused under Section 313 Cr.P.C., advancing arguments and pronouncement of judgment.

The defence in C.C.No.502 of 2014 pending on the file of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam and the allegations made in the complaint in C.C.No.440 of 2016 are identical and in case, the case of the petitioner in C.C.No.440 of 2016 is accepted, the other case in C.C.No.502 of 2014 would end in acquittal, while finding the accused guilty in C.C.No.440 of 2016 and similar is the situation in the other transfer petition. But, the apprehension is that the respondents 2 and 3 in Tr.Criminal Petition No.78 of 2018, who are also respondents 1 and 2 in Tr.Cr.P.No.116 of 2018 are influential persons at Vijayawada, and if C.C.No.502 of 2014 is withdrawn and transferred from the Court of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam to the Court of Vijayawada, there is possibility of threatening and on that ground, the petitioner in Tr.Criminal Petition No.78 of 2018 has to suffer inconvenience beside facing threat from respondents. For any reason, C.C.No.502 of 2014, which is at the far end of trial, is transferred to the Court of Vijayawada, in view of the apprehension, there is every chance of threatening the parties and the witnesses when they attend the Court and to avoid such threat and inconvenience to the parties, it is appropriate to withdraw both C.C.No.502 of 2014 from the Court of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam, and C.C.No.440 of 2016 from the Court of Chief Metropolitan Magistrate, Vijayawada, and transfer the same to the Court of Judicial First Class Magistrate at Rajahmundry, which is between Visakhapatnam and Vijayawada. Ultimately, the journey

from these two places i.e., either from Vijayawada or from Visakhapatnam may not exceed 2½ hours.

Since the Rajahmundry Court is at equal distance to both Vijayawada and Visakhapatnam and to avoid inconvenience to any of the parties, I find that it is a fit case to withdraw C.C.No.502 of 2014 from the Court of III Additional Chief Metropolitan Magistrate, Gajuvaka, Visakhapatnam and C.C.No.440 of 2016 from the Court of Chief Metropolitan Magistrate, Vijayawada, and transfer the same to the Court of Judicial First Class Magistrate at Rajahmundry.

On receipt of the record, the Judicial First Class Magistrate, Rajahmundry is directed to dispose of both the cases in accordance with law and pronounce judgment in both the cases on the same day.

Similarly, S.C.No.90 of 2016 is withdrawn from the Court of XIII Additional District and Sessions Judge, Vijayawada, Krishna District, and transferred the same to the Court of Principal District and Sessions Judge, Rajahmundry.

On receipt of record, the Principal District and Sessions Judge, Rajahmundry is directed to allot Sessions Case to Sessions Court to try and dispose of the same in accordance with law.

With the above directions, the Transfer Criminal Petitions are disposed of accordingly.

Miscellaneous petitions pending, if any, shall also stand closed.

M.SATYANARAYANA MURTHY,J

Date: 06.09.2018
Prv

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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