

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.CRL.P.No.144 OF 2018

ORDER:

This transfer criminal petition is filed under Section 407 Cr.P.C with a request to withdraw C.C.No.253 of 2016 pending on the file of Special Judicial Magistrate of First Class, Machilipatnam and transfer the same to the Court of III Metropolitan Magistrate, Vijayawada.

This petition is filed on the ground that total three complaints were filed against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act viz. C.C.No.326 and 659 of 2016 are pending on the file of III Metropolitan Magistrate, Vijayawada and C.C.No.253 of 2016 pending on the file of Special Judicial Magistrate of First Class, Machilipatnam.

The contention of the petitioner is that in all the three calendar cases promissory notes were executed on the same day. Out of three promissory notes, one promissory note was allegedly executed within the jurisdictional limits of Machilipatnam and two promissory notes were executed within the jurisdictional limits of Vijayawada. One Garikipati Prabhakara Rao, Advocate is the counsel for the respective complaints in all the three cases pending at Machilipatnam and Vijayawada and that the cheques alleged to have been issued by the petitioner have been misused and distributed amongst the three complainants. The petitioner being lady, aged about 52 years, facing immense hardship to travel to Machilipatnam on each and every date of adjournment. Therefore, she sought for withdrawal and transfer of the calendar case.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition.

Whereas learned counsel for the 2nd respondent opposed the petition on the ground that in all the three cases, complainants are different and in

C.C.No.253 of 2016 complainant is resident of Nadupuru, Pedana Mandal. In case, the calendar case is withdrawn and transferred to Vijayawada, the 1st respondent has to experience hardship, who is aged 54 years and that the convenience of the petitioner alone is not the ground to exercise power under Section 407 Cr.P.C.

Considering the rival consideration and material available on record, the point that arises for consideration is:

“Whether C.C.No.253 of 2016 pending on the file of Special Judicial Magistrate of First Class, Machilipatnam for the offence punishable under Section 138 of the Negotiable Instruments Act be withdrawn and transferred to any competent Court at Vijayawada?”

POINT:

It is an undisputed fact that three calendar cases are pending against the petitioner, but the complainant is different in the three cases. The Complainant in C.C.No.253 of 2016 was Singamsetty Sathi Babu, which was pending before the Special Judicial Magistrate of First Class, Machilipatnam. The complainant in C.C.No.326 of 2016 was Madala Srinivasa Rao and the complainant in C.C.No.659 of 2016 was Yarramsetty Suresh, which were pending before the IV Additional Chief Metropolitan Magistrate, Vijayawada. The date of promissory notes and on cheques is same in all the three cases. The only ground urged before this Court is that the petitioner being a lady, aged about 52 years cannot undertake journey from Vijayawada to Machilipatnam to appear before the Court on every date of adjournment. The inconvenience of the petitioner alone is not the ground to withdraw and transfer the case since such withdrawal would cause inconvenience to the complainant to undertake journey covering the same distance as he is aged 54 years by the date of filing the complaint. The witnesses proposed to be examined are from surrounding areas of Machilipatnam. If the case is withdrawn and transferred to Vijayawada,

inconvenience would be caused not only to the complainant, but also to the witnesses. If for any reason, hardship is being faced by the petitioner, she can file appropriate application under Section 205 Cr.P.C. to dispense with her appearance before the Court and the Court can pass appropriate orders taking the seriousness and gravity of the offence. Therefore, the ground urged in the petition is not sufficient to exercise power under Section 482 Cr.P.C. to withdraw and transfer the case and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed. However, liberty is given to the petitioner to file appropriate application under Section 205 Cr.P.C. before the Court below and on filing such application, if any, the Court below is requested to pass appropriate order in accordance with law following the principle laid down in **M/s Bhaskar Industries Ltd. V M/s Bhivani Denim and Apparels Ltd. and others¹**.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

02.08.2018
kvrm

M.SATYANARAYANA MURTHY,J

¹ AIR 2001 SC 3625