

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR. CRIMINAL PETITION NO.153 OF 2018

ORDER:

This transfer criminal petition is filed under Section 407 Cr.P.C to withdraw C.C.No.302 of 2017 on the file of Judicial Magistrate of First Class, Bellampally, Mancherial District and transfer the same to the Court at II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, Karimnagar.

The petitioner is the accused in C.C.No.302 of 2017, which was registered for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'N.I. Act'), whereas, the second respondent is the complainant.

In the present petition, the petitioner sought relief on two grounds. The first ground is that, wife of the complainant who issued statutory notice under Section 138(b) of N.I. Act, is conducting prosecution on behalf of the complainant before the Judicial Magistrate of First Class, Bellampally, Mancherial District and there is a possibility of influencing the Magistrate. The second ground raised before this Court is that, the second respondent/complainant is accused in C.C.No.536 of 2017 pending on the file of II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, and if, C.C.No.302 of 2017 on the file of Judicial Magistrate of First Class, Bellampally, Mancherial District is withdrawn and transferred to the Court at II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, Karimnagar, it is convenient to both the parties to wipe out the apprehension in the

minds of the parties that they will not get fair justice on account of conducting prosecution by the wife of the second respondent/complainant and requested to withdraw C.C.No.302 of 2017 on the file of Judicial Magistrate of First Class, Bellampally, Mancherial District and transfer the same to the Court at II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, Karimnagar.

During hearing, learned counsel for the petitioner Sri D. Arun Kumar reiterated the grounds urged in the petition, whereas, Sri A.K. Kishore Reddy opposed the petition on the ground that the petitioner is working as an employee in Singareni Collieries Company Limited and appearing before the Court at Bellampally with leave of the employer and if C.C.No.302 of 2017 on the file of Judicial Magistrate of First Class, Bellampally, Macherial District is withdrawn and transferred to any Court i.e. to the Court at II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, Karimnagar, it would be difficult for him to obtain leave from his employer and appear before the Court at Bellampally on the dates of adjournment and it will cause much inconvenience to him, rather than inconvenience being caused to the petitioner who is attending the Court, undertaking journey from Hyderabad to Bellampally and requested to dismiss the petition.

It is an admitted fact that the petitioner is a resident of Nizampet, Hyderabad, whereas, the second respondent is employed in Singareni Collieries Company Limited at Bellampally. C.C.No.302 of 2017 was filed before Judicial Magistrate of First

Class, Bellampally, Mancherial District and it is pending for adjudication. It is also an admitted fact that wife of the second respondent/complainant is a practicing advocate, who issued a statutory notice under Section 138(b) of N.I. Act and conducting prosecution. Merely because, wife of the second respondent is a practicing advocate, representing her husband, question of influencing the judicial officer by the advocate, who is appearing regularly does not arise and if, such allegation is accepted, it is difficult for any officer to discharge their official duties and the apprehension is unfounded and baseless. Therefore, on this ground, C.C.No.302 of 2017 on the file of Judicial Magistrate of First Class, Bellampally, Mancherial District cannot be withdrawn and transferred to the Court at II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, Karimnagar.

The other ground is that, the second respondent is facing trial as an accused in C.C.No.536 of 2017 pending on the file of II Additional Junior Civil Judge-cum-JMFC at Godavarikhani. Merely because, he is appearing before the other court and facing the trial for the offence punishable under Section 138 of N.I. Act, he cannot be compelled to go and appear before other Court by withdrawing C.C.No.302 of 2017 on the file of Judicial Magistrate of First Class, Bellampally, Mancherial District and transfer the same to the Court at II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, Karimnagar, as it would cause much inconvenience, since there is no possibility of posting both the cases on one day. Besides that, the distance between Bellampally to Hyderabad is almost equivalent to the distance between

Godavarikhani and Hyderabad. Therefore, the inconvenience being caused to the second respondent outweighs the inconvenience caused to the petitioner in the event C.C.No.302 of 2017 on the file of Judicial Magistrate of First Class, Bellampally, Mancherial District is withdrawn and transferred the same to the Court at II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, Karimnagar. Taking into the facts and circumstances of the case, I find that it is not a fit case to exercise power under Section 407 Cr.P.C to withdraw C.C.No.302 of 2017 on the file of Judicial Magistrate of First Class, Bellampally, Mancherial District and transfer the same to the Court at II Additional Junior Civil Judge-cum-JMFC at Godavarikhani, Karimnagar. Consequently, the transfer criminal petition is liable to be dismissed.

In the result, transfer criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 20.08.2018

SP