

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.CRL.P.No.213 OF 2018

ORDER:

This transfer criminal petition is filed under Section 407 Cr.P.C with a request to withdraw C.C.No.1298 of 2017 pending on the file of Judicial Magistrate of First Class, Srikakulam and transfer the same to the Court of IV Additional Judicial Magistrate of First Class, Kakinada, East Godavari District to try along with C.C.No.27 of 2018.

Both the calendar cases are filed for the offence punishable under Section 138 of the Negotiable Instruments Act.

Learned counsel for the petitioner submitted that the defence set up in both the calendar cases is one and the same and on account of pendency of two calendar cases before the two different Courts, there is every possibility of conflicting judgment and to avoid the same, C.C.No.1298 of 2017 pending on the file of Judicial Magistrate of First Class, Srikakulam may be transferred to the Court of IV Additional Judicial Magistrate of First Class, Kakinada, East Godavari District to try along with C.C.No.27 of 2018.

C.C.No.27 of 2018 is filed by Dammala Lakshmana Rao, resident of Navara Village, Samalkota Mandal, East Godavari District on the ground that the petitioner borrowed an amount of Rs.12,00,000/- with interest @ 18% per annum executing promissory note on 05.05.2017 and on several demands, the petitioner issued Cheque No.520460 for Rs.8,00,000/- on 28.10.2017 drawn on State Bank of India, Thimmapuram Branch, Kakinada towards discharge of legally enforceable debt and when the said cheque was presented for collection on 02.11.2017, dishonoured vide cheque return memo dated 02.11.2017 as drawer's signature differs. Whereas, C.C.No.1298 of 2017 is filed by Swamysetti Upendranathbabu, resident of Indras Nivas, Mangavarithota, Srikakulam District on the ground that the

petitioner borrowed an amount of Rs.10,00,000/- with interest @ 18% per annum executing promissory note on 04.03.2016 and on several demands, the petitioner issued Cheque No.520457 for Rs.8,00,000/- on 29.06.2017 drawn on State Bank of India, Thimmapuram Branch, Kakinada towards discharge of legally enforceable debt and when the said cheque was presented for collection on 29.07.2017, dishonoured vide cheque returned memo dated 29.07.2017 as funds insufficient. Even after issue of legal notices, the petitioner did not pay the amounts covered by cheques. Therefore, the complainants filed the complaints.

At the end, learned counsel for the petitioner requested the Court to dispense with the presence of the petitioner before the Court below. This Court cannot exercise power under Section 205 Cr.P.C while exercising power under Section 407 Cr.P.C. However, the petitioner is permitted to file appropriate application under Section 205 Cr.P.C. or Rule 37 of the Criminal Rules of Practice before the Magistrate and on filing such application, the Magistrate is directed to dispose of the said application within a week by following the judgments of the Apex Court in **M/s Bhaskar Industries Ltd. V M/s Bhivani Denim and Apparels Ltd. and others¹** and **T.G.N. Kumar v. State of Kerala²**.

With the above direction, the transfer criminal petition is disposed of.

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

M.SATYANARAYANA MURTHY,J

03.10.2018
kvrm

¹ AIR 2001 SC 3625

². 2011(1) KLT 362