

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Transfer Criminal Petition No.228 of 2017

ORDER:

This Transfer Criminal Petition is filed by the petitioners/A1, A2, A4 and A5 seeking to transfer C.C.No.223 of 2014 from the file of XII Special Magistrate Court, Hyderabad to any other Criminal Court of competent jurisdiction at Hyderabad.

2) Notice given to second respondent/complainant who filed his counter and opposed the petition.

3) Heard.

4) Second respondent/complainant filed C.C.No.223 of 2014 (old C.C.No.274 of 2014) against the petitioners and some other accused under Section 138 of Negotiable Instruments Act, 1881 (for short "N.I.Act") alleging that accused in construction business and the complainant interested to own a business slot and the accused agreed to sell a slot to complainant and for that purpose he paid Rs.1 crore and later accused failed to complete the work and therefore disputes arose between them and ultimately they came to a memorandum of understanding that A1 to A6 would pay an amount of Rs.2,66,00,000/- to the complainant. Accordingly, they paid an amount of Rs.1,50,00,000/- leaving behind the balance of Rs.1,16,00,000/-. Thereafter, towards the part payment of balance amount A1 issued a cheque for Rs.66,00,000/- in favour of the complainant which was dishonoured on presentation. After following legal formalities the compliant filed C.C.No.223 of 2014 under Section 138 of N.I.Act.

5) The submission of learned counsel for petitioners/A1, A2, A4 and A5 is that between the same parties there was another criminal case, CC.No.79 of 2014 pending on the file of XII Special Magistrate Court, Hyderabad which ended in conviction. In the aforesaid case the trial Court has not properly appreciated the evidence on record and convicted the petitioners/accused. Therefore, they apprehend they may not get fair trial and justice before the said Court in the present C.C.No.23 of 2014. Hence, the CC No.223 of 2014 may be transferred to any other Criminal Court of competent jurisdiction at Hyderabad. He would submit the petitioners have filed Tr.Crl.M.P.No.749 of 2017 before the Metropolitan Sessions Judge, Hyderabad and the same was dismissed on 13.09.2017.

6) Second respondent/complainant filed counter and opposed the petition denying the petition averments. He would contend that the Sessions Court rightly rejected their application observing that cases cannot be transferred on mere apprehension of the parties without any substantial reasons.

7) A perusal of the order in Tr.Crl.M.P.No.749 of 2017 would show that learned MSJ called for remarks of the officer concerned and those remarks revealed that the officer was bestowing due care in disposing of the matter. The High Court stayed all further proceedings in C.C.No.223 of 2014 so far as A3 and A6 are concerned, therefore the trial Court has split up case against A3 and A6 on 06.02.2017 and proposed to proceed with the trial against the other accused as per law. Learned Magistrate had ultimately submitted that he had no objection to transfer C.C.No.223 of

2014. Having perused the remarks, learned MSJ observed that mere splitting up the case so far as accused in respect of whom there was no stay and proceeding with the trial, does not show any undue interest or hostile attitude towards those accused and therefore, there was no substantial reason for apprehension of the petitioners to transfer the case and accordingly dismissed their transfer application.

8) This Court on a careful consideration of the matter finds no illegality or perversity in the order impugned. Merely because one case between the same parties was ended in a particular fashion that does not mean that the other case would also follow suit. Each case needs to be considered on its own merits and demerits. As rightly observed by the learned MSJ, mere split up of C.C.No.223 of 2014 as against the accused in respect of whom there was no stay and proceeding with the trial cannot be picturised as showing undue haste or hostility towards the accused. Therefore, there is no valid ground to transfer C.C.No.223 of 2014 as sought for.

9) Accordingly, this Transfer Criminal Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 11.04.2018
Murthy

U.DURGA PRASAD RAO, J