

THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

Tr. CRIMINAL PETITION NO.18 OF 2019

ORDER:

This Transfer Criminal Petition is filed under Section 407 of the Code of Criminal Procedure, 1973, by the petitioner/accused, seeking a direction to transfer C.C.No.250 of 2018 from the file of II Special Magistrate at Hasthinapuram, Cyberabad to the Court of VI Special Magistrate at Erramanzil, Hyderabad to try along with C.C.No.70 of 2018 on the file of the said Court.

2. Heard the learned counsel for the petitioner/accused, the learned Assistant Public Prosecutor for the respondent No.2/State and perused the record. In spite of service of notice on the respondent No.1, there is no representation on his behalf.

3. In the course of submissions, it is contended by the learned counsel for the petitioner that initially complaint relating to an offence under Section 138 of Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') was filed before the VI Special Magistrate at Erramanzil, Hyderabad against respondent No.1 herein in November, 2017 and it is numbered as C.C.No.70 of 2018. Thereafter, the same complainant had filed another complaint against the same party for the same offence under Section 138 of N.I. Act before the II Special Magistrate at Hasthinapuram, Cyberabad. It is contended that in terms of Section 142-A of N.I. Act all subsequent complaints filed under Section 138 of N.I. Act are to be transferred to the Court where the first complaint was filed, and ultimately prayed that the

subject CC.No.250 of 2018, on the file II Special Magistrate at Hasthinapuram, Cyberabad, be transferred to the Court of VI Special Magistrate at Erramanzil, Hyderabad where the first complaint is filed and is pending.

4. In view of the submissions made, it is appropriate to refer to the provisions of Section 142A of the N.I. Act, which reads as follows:

"142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times."

5. It is seen, as envisaged under the provisions of Section 142-A of the N.I. Act all subsequent complaints filed for the offence punishable under Section 138 of N.I. Act against the same party are liable to be filed at the Court of first instance. In

the instant case, since the first complaint under Section 138 of N.I. Act is filed before the VI Special Magistrate at Erramanzil, Hyderabad and is numbered as C.C.No.70 of 2018 and as the same is pending, the subsequent complaint i.e., C.C.No.250 of 2018 pending on the file of II Special Magistrate at Hasthinapuram, Cyberabad, is liable to be withdrawn and transferred to the Court of first instance.

6. Under these circumstances, the C.C.No.250 of 2018 pending on the file of II Special Magistrate at Hasthinapuram, Cyberabad is withdrawn and is transferred to the Court of VI Special Magistrate at Erramanzil, Hyderabad, for disposal in accordance with law.

7. Accordingly, the Transfer Criminal Petition is allowed. Miscellaneous petitions, pending if any, shall stand closed.

Dr.JUSTICE SHAMEEM AKTHER

Date:19.03.2019

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