HONOURABLE JUSTICE G. SRI DEVI

TRANSFER CRIMINAL PETITION Nos.60 and 62 of 2019

COMMON ORDER:

1. Both the Transfer Criminal Petitions are filed by the petitioner/accused seeking transfer of C.C.Nos.234 and 241 of 2014, pending on the file of the III Special Magistrate, Erramanzil, Hyderabad, to the Court of the XII Additional Chief Metropolitan Magistrate, Hyderabad, to be tried along with C.C.No.153 of 2015.

2. Since the accused and the complainant in all the cases is one and the same and the issue involved in both the petitions is common, the same are being disposed of by this common order.

3. It is stated that two private complaints came to be filed by the second respondent/complainant against the petitioner/accused for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881, which are pending on the file of the III Special Magistrate, Erramanzil vide C.C.Nos.234 and 241 of 2014. The second respondent also filed another complaint against the petitioner/accused for the offences punishable under Sections 406, 420, 468 and 471 read with 34 I.P.C. on the same set of facts, which is pending before the XII Additional Chief Metropolitan Magistrate, Hyderabad vide C.C.No.153 of 2015. Therefore, it is just and necessary to try all the matters by one court, to avoid conflicting of judgments.

4. The second respondent/complainant filed counter admitting that three cases are pending against the petitioner/accused in two different Courts, but contended that the issue in the above C.C.s are different in nature. The police case is filed for forgery and cheating, whereas two private complaints have been filed for dishonour of cheques and that the petitioner/accused is trying to prolong the matters without cooperating for trial. It is further contended that the petitioner herein has suppressed the fact of filing of Transfer Petitions before the Sessions Court.

5. Learned Counsel for the petitioner would submit that all the cases arose out of the same transaction and the relevant documents for the said transaction have been seized in Crime No.176 of 2013, which are part of the record in C.C.No.153 of 2015 and as such no prejudice would be caused to the second respondent/complainant if the same are being tried by one Court. He further submits that if the cases are tried by two different courts, then different views will be possible and it will get prejudice to the petitioner. He furthers submits that all the cases are being tried by one Court only to avoid divergent views.

6. Reiterating the contents in the counter, the learned counsel for the second respondent/complainant would submit that the issue in all the cases is different in nature and the stages in the above cases are different and the cases under N.I.Act are posted for cross-examination of PW.1 and the case under I.P.C. is at the stage of

examination of accused. The petitioner is trying to prolong the matters and he is also not co-operating for trial. It is further stated that the learned Metropolitan Sessions Judge, after considering the entire material on record, rightly dismissed the Transfer Petitions filed by the petitioner, but the petitioner has suppressed the fact of filing and dismissal of the Transfer Petitions. He further submits that no prejudice would be caused to the petitioner, if the cases are tried separately.

7. The point that arises for consideration is "whether C.C.Nos.234 of 2014 and 241 of 2014 are to be withdrawn from the file of the III Special Magistrate, Erramanzil and transfer the same to the Court of the XII Additional Chief Metropolitan Magistrate, Hyderabad, to try along with C.C.No.153 of 2015"?

8. Admittedly, three cases are filed by the second respondent/complainant against the petitioner/accused. Out of which, two are private complaints for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 and another one is police case registered for the offences punishable under Sections 406, 420, 468 and 471 read with 34 I.P.C. A perusal of the material on record would show that C.C.No.234 and 241 of 2014 are filed alleging that the petitioner/accused had issued cheques bearing Nos.099437 dated 11.07.2013 for Rs.30,00,000/-, 099438 dated 21.07.2013 for Rs.30,00,000/-, 099439 dated 11.08.2013 for Rs.40,00,000/- and 099440 dated 21.08.2013 for Rs.40,00,000/-

towards part payment of outstanding amount due to the 2nd respondent/complainant and when the cheques were presented in banks, they were bounced back for want of funds. Though the statutory notice was issued to the petitioner, he failed to pay the amount covered by the cheques. Therefore, the second respondent filed C.C.Nos.234 and 241 of 2014, which are pending before the III Special Magistrate, Erramanzil, Hyderabad. The contents of the charge sheet in C.C.No.153 of 2015 disclose that the petitioner with the assistance of one Lipika Benarji (accused No.2) and his wife A.Srilatha (accused No.3) intentionally misappropriated the amount which was remitted by the second respondent from time to time into various banks during the period from 13.07.2011 to 31.01.2013. Basing on the above allegations, charge sheet came to be filed for the offences punishable under Section 420, 406, 468 and 471 IPC, which was taken cognizance as C.C.No.153 of 2015 and the same is pending before the XII Additional Chief Metropolitan Magistrate, Hyderabad.

9. All the cases are pending in two different Courts. It is alleged that the cheques were issued by the petitioner/accused admitting his liability with regard to the amounts remitted by the 2nd respondent/complainant. C.C.No.153 of 2015 is filed against the petitioner with an allegation of cheating and misappropriation of amounts. A perusal of the order passed by the learned Metropolitan Sessions Judge, Hyderabad in Transfer Crl.M.P.Nos.1049 and 1051

of 2019 would also show that the cause of action for the complaints under Section 138 of the N.I. Act and the complaint under I.P.C. are arising out of one transaction. Hence, if all cases are tried separately, certainly there is no possibility to the Presiding Officers, who are trying the cases, to decide whether the petitioner had misappropriated the amount or not. To protect the rights of the petitioner; to avoid conflicting decisions and to enable the Court to come to a right conclusion, I find that it is a fit case to transfer C.C.Nos.234 and 241 of 2014 on the file of the III Special Magistrate, Erramanzil, Hyderabad, to the Court of XII Additional Chief Metropolitan Magistrate, Hyderabad, to try along with C.C.No.153 of 2015.

10. Accordingly, both the Transfer Criminal Petitions are allowed and C.C.Nos.234 and 241 of 2014 are withdrawn from the file of the III Special Magistrate, Erramanzil, Hyderabad, and transferred to the Court of XII Additional Chief Metropolitan Magistrate, Hyderabad, to be tried along with C.C.No.153 of 2015.

11. However, the learned XII Additional Chief Metropolitan Magistrate, Hyderabad, is directed to dispose of all the three cases i.e., C.C.No.234 of 2014, 241 of 2014 and 153 of 2015, as expeditiously as possible, preferably, within a period of six months from the date of receipt of records in C.C.Nos.234 and 241 of 2014. The III- Special Magistrate, Hyderabad, is directed to send the entire records pertaining to C.C.Nos.234 and 241 of 2014, pending on its file, to the

Court of XII Additional Chief Metropolitan Magistrate, Hyderabad, immediately, on receipt of a copy of this order. The parties are directed to appear before the XII Additional Chief Metropolitan Magistrate, Hyderabad.

12. As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE G. SRI DEVI

28.08.2019
Gsn