

HONOURABLE JUSTICE G. SRI DEVI
TRANSFER CRIMINAL PETITION No.100 of 2019

ORDER:

The present Transfer Criminal Petition is filed by the petitioner/accused seeking transfer of C.C.No.11 of 2017, pending on the file of the I-Special Magistrate, Cyberabad at Malkajgiri to the Court of XVII Metropolitan Magistrate, Cyberabad at Malkajgiri.

Brief facts of the case are that a private complaint came to be filed by the 1st respondent/complainant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner/accused, alleging therein that the petitioner/accused is acquainted with him since a long time through her son, Mr.Hari, as such, the petitioner/accused and her son approached him in the month of July, 2016 and requested for a hand loan of Rs.10,00,000/- upon which, the 1st respondent/complainant advanced an amount of Rs.10,00,000/- on 13.07.2016 to the petitioner/accused to meet her urgent domestic needs. The said amount was advanced to the petitioner/accused at the office of the 1st respondent/complainant in the presence of one Bhargav and that the petitioner/accused promised to repay the same within a short period. It is also stated in the complaint that when the 1st respondent/complainant asked for repayment of the loan amount, the petitioner/accused has been dodging the issue on one pretext or the other. Thereafter, the petitioner/accused issued a cheque bearing No.078223, dated

26.07.2016 for Rs.10,00,000/- drawn on Indian Overseas Bank, Sainikpuri Branch, in favour of the 1st respondent/complainant towards repayment of hand loan and towards discharge of legally enforceable debt. When the said cheque was presented by the 1st respondent/Complainant through his banker Indian Overseas Bank, Sainikpuri Branch, the same was returned un-paid due to insufficient funds in the account of the petitioner/accused, vide cheque return memo, dated 17.10.2016. The 1st respondent/complainant got issued a legal notice dated 03.11.2016, demanding the petitioner/accused to repay the said cheque amount within 15 days, through registered post with acknowledgment due. Though the said notice was received by the petitioner/accused, she did not choose to repay the cheque amount. Therefore, the 1st respondent/complainant filed the said private complaint, which was taken on file as C.C.No.11 of 2017. When the said C.C. was posted for defence arguments, the petitioner/accused filed Tr.Crl.M.P.No.3514 of 2019 before the Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District at L.B.Nagar, seeking to transfer C.C.No.11 of 2017 from the file of the I-Special Magistrate Court, Malkajgiri to the Court of XVII Metropolitan Magistrate, Malkajgiri. By an order, dated 22.10.2019, the learned Metropolitan Sessions Judge dismissed the said Transfer Criminal Petition. Now the petitioner/accused has come forward with the present Transfer Criminal Petition seeking to withdraw C.C.No.11 of 2017 from the

file of the I-Special Magistrate, Malkajgiri, Cyberabad and transfer the same to XVII Metropolitan Magistrate, Cyberabad at Malkajgiri.

Heard learned Counsel appearing for the petitioner/accused, learned Counsel appearing for the 1st respondent/complainant and the learned Public Prosecutor appearing for the 2nd respondent-State.

Learned Counsel for the petitioner/accused submits that the 1st respondent/complainant has also filed cases under Section 138 of the N.I. Act against the son of the petitioner/accused and the said cases were ended in conviction. He further submits that the 1st respondent/complainant is doing money lending business without having any licence; the petitioner/accused had not availed any loan and it is the son of the petitioner/accused who availed the loan and that despite the petitioner/accused repaying the loan amount, the 1st respondent/complainant got presented the cheque and filed the false complaint. He further submits that since the trial Court has not considered the similar defence raised by the son of the petitioner/accused in the said cases, the petitioner/accused apprehends that she may not get justice in the instant case as she is also standing on the same footing. It is also submitted that the learned Magistrate is evincing interest in the cases of the 1st respondent/complainant and, therefore, the petitioner/accused seeks transfer of the aforesaid case.

Learned Counsel for the 1st respondent/complainant would submit that the petitioner/accused has filed a Writ Petition and SLP before this Court and Supreme Court respectively seeking transfer of the case, but the same were dismissed. It is also submitted that only to drag on the proceedings and to avoid liability, the petitioner/accused has filed the present transfer Criminal Petition. It is also submitted that after considering the entire material available on record, the learned Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District, dismissed Tr.Crl.M.P.No.3514 of 2019 filed by the petitioner/accused. However, without challenging the said order, the petitioner/accused again filed the present Transfer Criminal Petition.

Now the point that arises for consideration is “whether C.C.No.11 of 2017 pending on the file of the I-Special Magistrate, Cyberabad at Malkajgiri, be withdrawn and transferred to the file of the XVII Metropolitan Magistrate, Cyberabad at Malkajgiri?”

Before proceeding further, it would be appropriate to refer to Section 407 of Cr.P.C., which reads as under:

Section 407 - Power of High Court to transfer cases and appeals (1) Whenever it is made to appear to the High Court-

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or
- (b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice; it may order —

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative: Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him. (3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate- General of the State, be supported by affidavit or affirmation. (4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application,

together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.

A reading of Section 407 Cr.P.C. makes it clear that this Court can pass an order whenever it appears that a fair and impartial inquiry or trial cannot be had in a particular Court or transfer of a case is expedient for the ends of justice. When it is established that a party may not get a fair and impartial inquiry or trial or

circumstances are of such nature which are convinced the Court that transferring of a case is inevitable or expedient in the ends of justice the Court can pass such an order.

In the instant case, the main apprehension of the petitioner/accused for seeking transfer is that she may not get justice before the I-Special Magistrate's Court, Malkajgiri, as the learned Magistrate convicted and sentenced the son of the petitioner/accused without considering his defence in the cases filed by the 1st respondent/ complainant against him. Admittedly, in the aforesaid Calendar Case, entire evidence on either side was over and the same was posted for defence arguments. Mere apprehension of the petitioner/accused that she would not get justice before trial Court as the similar defence taken by her son in the earlier cases was not considered is not a ground to transfer the C.C. to any other Court. The learned Metropolitan Sessions Judge, Cyberabad, after considering the submissions of both the petitioner/accused and the 1st respondent/complainant, had dismissed the Transfer CrI.M.P. filed by the petitioner/accused. Hence, I do not find any merit in the transfer petition and the same is liable to be dismissed.

Accordingly, the Transfer Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

JUSTICE G. SRI DEVI

20.12.2019
gkv/Gsn

