

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.3487 of 2020 and
Crl.MP.No.2041 of 2020

G.Udayaraj

... Petitioner

Vs.

D.Saravanan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the docket order dated 28.01.2020 made in CC.No.62 of 2017 on the file of the District Munsif cum Judicial Magistrate, Pennagaram and set aside the same by allowing this criminal original petition.

For Petitioner : Mr.V.Anandhamoorthy

For Respondent : No Appearance

O R D E R

This petition has been filed challenging the docket order dated 28.01.2020 made in CC.No.62 of 2017 on the file of the District Munsif cum Judicial Magistrate, Pennagaram.

2. The learned counsel for the petitioner would submit that the respondent filed complaint for the offences punishable under Section 138 of NI Act as against the petitioner before the learned District Munsif cum Judicial Magistrate, Pennagaram and the same has been taken cognizance in CC.No.62 of 2017. On receipt of summon, the petitioner also appeared before the trial court and both side evidences were completed. In fact, both side arguments also over and the matter was posted for judgment. While being so, on 28.01.2020, the respondent defacto complainant filed memo stating that the trial court, namely the District Munsif cum Judicial Magistrate, Pennagaram has no jurisdiction to try the complaint since the alleged cheque was presented before Karur Vysya Bank, Dharmapuri Town, Dharmapuri District and as such it has to be transferred before the Fast Track Court, Judicial Magistrate Level at Dharmapuri. The trial court without hearing the petitioner, passed order on the memo filed by the respondent stating that the trial court has no jurisdiction to try the case since the complainant's bank is situated in Dharmapuri. Therefore, the case was transferred to

the Judicial Magistrate, Fast Track Court, Dharmapuri and both the parties are directed to appear before the said court on 17.02.2020.

2.1 He, further submitted that the petitioner as well as the respondent are residing at Coimbatore. The entire transaction held between them only at Coimbatore, and it is also categorically admitted by the respondent in his evidence. When it being so, only to drag the petitioner to Dharmapuri, he opened account with the Karur Vysya Bank at Dharmapuri and presented the cheque for collection. Even then, the respondent did not file any complaint within the jurisdiction of the said bank and he wantonly filed complaint before the District Munsif cum Judicial Magistrate, Pennagaram. Even then, the petitioner appeared and trial was conducted and also arguments were over from both sides. When the matter was posted for judgments on 24.01.2020 on the memo filed by the respondent, the learned Magistrate mechanically without applying mind, transferred the entire case to the file of the Judicial Magistrate, Fast Track Court, Dharmapuri. Therefore, he sought for setting aside the said order dated 28.01.2020.

3. Heard Mr.V.Anandhamoorthy, the learned counsel for the petitioner. Though notice was served on the respondent and printed the name in the cause list, no one appeared on behalf of the respondent in person or through pleader.

4. The petitioner is the accused in the complaint lodged by the respondent for the offences punishable under Section 138 of NI Act. According to the respondent, the petitioner is running a chit fund company, namely USV Chit Funds Private Limited, in which the respondent participated as subscriber under the scheme of Rs.25 lakhs chit fund, and he became successful bidder on 01.05.2016 for Rs.19,40,000/-. Even then, the petitioner evaded the payment of the said amount and to discharge the said liability, the petitioner issued two post-dated cheques for a sum of Rs.18,10,000/- in favour of the respondent. When the respondent presented the said cheques for collection in his banker, namely Karur Vysya Bank, Dharmapuri, the same was returned dishonoured for the reason with endorsement that "payment stopped by drawer". After issuance of statutory notice, the respondent filed complaint before the District Munsif cum Judicial Magistrate at Pennagaram. The learned trial court conducted trial from the year 2017 and after hearing the arguments posted the matter for judgments. In fact, the petitioner also submitted the written arguments and when the matter was posted for judgments on 24.01.2020 the respondent filed memo stating that the cheque was presented before the Karur Vysya Bank, Dharmapuri and as such the trial court has no jurisdiction to try the case. On the said memo, the trial court

passed the impugned order stating that when the cheque was presented before Karur Vysya Bank situated at Dharmapuri Town, Dharmapuri, the trial court has no jurisdiction to try the case and transferred the case to the file of the Judicial Magistrate, Fast Track Court, Dharmapuri.

5. On perusal of records, the entire transactions took place at Coimbatore where the petitioner was running the chit business. The respondent is also residing at Coimbatore and he was also one of the subscribers to Rs.25 lakhs chit. When the respondent was successful bidder in the chit transaction, the petitioner issued two cheques for the chit amount in favour of the respondent herein. Only to present the cheques, the respondent opened the account at Karur Vysya Bank, Dharmapuri and presented the said cheques for collection. It revealed from the evidence of PW2, Bank Manager, who categorically deposed that the respondent had opened the bank account No.1613155000124549 only in the month of February 2017 and the alleged cheques were presented for collection on 24.02.2017. The respondent categorically admitted in his evidence that he is having business at Coimbatore and he resides at Coimbatore. Therefore, the respondent opened the account only to drag the petitioner to Dharmapuri and presented the cheques for collection. When the jurisdiction arises to lodge the complaint before the Judicial Magistrate at Dharmapuri District, the respondent wantonly filed complaint before the District Munsif cum Judicial Magistrate at Pennagaram. The trial court also mechanically had taken cognizance and issued summon. The trial court also completed entire trial and when the matter was posted for judgment, the respondent cannot file memo to transfer the case to the file of Judicial Magistrate at Dharmapuri. Though the trial court rightly passed order that the trial court has no jurisdiction to try the case and transferred the case to the file of the Judicial Magistrate at Dharmapuri, it would be appropriate to transfer the case to the file of the Judicial Magistrate, Coimbatore, since the alleged cheques were issued from the accused bank situated at Coimbatore and also the respondent complainant resides at Coimbatore and the entire transactions were held at Coimbatore.

6. Accordingly, the order dated 28.01.2020 made in CC.No.62 of 2017 on the file of the District Munsif cum Judicial Magistrate, Pennagaram is set aside and the entire case in CC.No.62 of 2017 is hereby withdrawn from the file of the District Munsif cum Judicial Magistrate, Pennagaram and transferred to the file of the Fast Track Court, Magistrate Level, Judicial Magistrate-II, Coimbatore as such the District Munsif cum Judicial Magistrate, Pennagaram is hereby directed to send the entire bundle in respect of CC.No.62 of 2017 to Fast Track Court, Magistrate Level, Judicial Magistrate-II,

Coimbatore forthwith. On receipt of the entire bundle, the Judicial Magistrate-II, Fast Track Court, Magistrate Level, Coimbatore is directed to dispose of the case within a period of four weeks from the date of the receipt of the entire bundle.

7. With the above directions, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate,
Pennagaram
2. The learned Judicial Magistrate
at Dharmapuri
3. The Judicial Magistrate-II,
Fast Track Court, Magistrate Level,
Coimbatore

CRL.O.P.No.3487 of 2020

SVI (CO)
RV (02/11/2020)

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