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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.8052 of 2022

and

Crl.M.P.Nos.4667 & 4669 of 2022

E.Riyaz Ahamed,
S/o.Late Anwartheen

...Petitioner/Accused

Vs

G.Balasubramanian,
S/o.Ganesan

...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 407 of Cr.P.C., to transfer the STC.No.177 of 2021 pending on the file of the Judicial Magistrate Court, Fast Track Court Magisterial Level, Attur, Salem District to any other competent Court of nearby District.

For Petitioner : M/s.W.Camyles Gandhi

ORDER

This Criminal Original Petition has been filed, to transfer the STC.No.177 of 2021 pending on the file of the Judicial Magistrate Court, Fast Track Court Magisterial Level, Attur, Salem District to any other competent Court of nearby District.

2.The case of the petitioner is that he is an accused facing trial in STC.No.177 of 2021 on the file of the Judicial Magistrate Court, Fast Track Court Magisterial Level, Attur, Salem District for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3.It is further case of the petitioner that the petitioner has appeared for the first hearing on 30.12.2021 and filed vakalat via., local counsel. Thereafter, the matter was adjourned to 09.02.2022 and there was no physical hearing on the same date, the petitioner has not appeared on the said date and filed petition under Section 317 of Cr.P.C and thereafter the case was adjourned to 21.02.2022. The petitioner appeared before the Court on 21.02.2022. and thereafter, the case was



adjourned to 02.03.2022. While the petitioner was coming out of the Court along with his friend, they were apprehended by several unknown persons and that they were kidnapped and abducted.

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4. Thereafter, the petitioner along with his friend and his car was taken to an unknown location where the unknown persons threatened the petitioner to settle Rs.1 Crore immediately to the complainant or else the petitioner's life would not be spared. The petitioner and his friend were kept in custody of the respondent till late evening and on the request of the petitioner, the respondent allowed the petitioner for urination. At that time, the petitioner had called his Advocate at Chennai and due to the intervention of the local advocates/counter parts at Attur, the petitioner was rescued by police team. Thereafter, the case was posted on 04.04.2022. On that day, the petitioner has appeared and the case stands posted on 06.04.2022. He would further submit that the petitioner's complaint to the police is being enquired in STC.No.477 of 2021. The petitioner still apprehends threat to his life.

5. The learned counsel for the petitioner would further submit that though the petition has been filed for transfer of the case from the file of the Judicial Magistrate Court, Fast Track Court Magisterial Level, Attur, Salem District to some other Court, it would be suffice that the personal appearance of the petitioner may be dispensed by the concerned Court.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. It is the case of the petitioner that he was threatened by the persons engaged by the complainant in STC.No.177 of 2021. Now it is submitted that though the petition has been filed seeking for transfer, it would be suffice that the personal appearance of the petitioner may be dispensed before the Trial Court.

8. Accepting the said submission of the learned counsel for the petitioner, the presence of the petitioner before the trial Court shall be dispensed with on condition that he shall be present on the first day of appearance, on the date fixed for receiving the copies, initial questioning, reply to charges and questioning under Section 313 of Cr.P.C., and at the time of passing Judgment and whenever insisted upon by the Trial Court.

9. The petitioner is further directed to give an undertaking in the form of affidavit that he will be duly represented by a counsel on all hearing dates and that the Counsel representing him will cross-examine the prosecution witnesses on the same day



they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event his presence is insisted by the Trial Judge for the purpose of identification. If the petitioner adopts any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the Judgment of Hon'ble Supreme Court of India in State of Uttar Pradesh Vs. Shambunath Singh, reported in 2001 (4) SCC 667.

10. Accordingly, this Criminal Original Petition dismissed. The connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

arb/rgm

To

The Judicial Magistrate Court,
Fast Track Court Magisterial Level,
Attur, Salem District.

+6cc to Mr. W. Camyles Gandhi, Advocate, S.R.No.24405, 24871

CrI.O.P.No.8052 of 2022
and
CrI.M.P.Nos.4667 & 4669 of 2022

PA (CO)
RGA (25/04/2022)