



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Cr1.O.P. (MD)No.20410 of 2021

and

CRL MP (MD)No.11621 of 2021

T.K.Mohamed Musthaque

... Petitioner/
Respondent

Vs.

R.Velmurugan

...Respondent/
Petitioner

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to issue a direction to withdraw the case in STC.No.441 of 2017 pending before the learned Judicial Magistrate, Rameshwaram and to transfer the same to the learned Judicial Magistrate, Madurai or to any other competent Court for fair trial.

For Petitioner : Mr.B.Saravanan

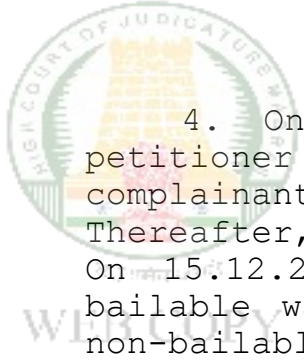
For R1 & R2 : Mr.M.Kannan

ORDER

This Criminal Original Petition has been filed praying to issue a direction to withdraw the case in STC.No.441 of 2017 pending on the file of the learned Judicial Magistrate, Rameshwaram and to transfer the same to the learned Judicial Magistrate, Madurai or to any other competent Court for fair trial.

2.The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Sections 138 and 142 of Negotiable Instruments Act 1881.

3.The petitioner filed the Criminal Original Petition for transfer of the case from the file of the learned Judicial Magistrate, Rameswaram to the file of the learned Magistrate, Madurai or to any other competent Court, on the ground that the learned Judicial Magistrate acted in a biased manner and failed to give sufficient opportunity for the petitioner to cross examine P.W.1. Further, the learned Counsel, who appearing on behalf of the respondents/defacto complainant is a Bar President and as such, he has influence with all other advocates and Judicial Officer and as such, if the trial continues with the same Court, the petitioner may not get fair trial from the Trial Court. Whenever, the respondents asked for adjournment, it was considered by the learned Judicial Magistrate and whenever the petitioner sought for an adjournment, it was rejected.



4. On perusal of the records, it would reveal that the petitioner is coming from Kerala. On 27.11.2020 itself the defacto complainant was examined as P.W.1 and Exs.P1 to P7 were marked. Thereafter, it was posted to cross examine t P.W.1 on 15.12.2020. On 15.12.2020, the petitioner was absent and as such the non-bailable warrant was issued as against the petitioner. The said non-bailable warrant was recalled only after a period of several months. The complaint had been taken cognizance in the year 2017 and P.W.1 was examined only on 27.11.2020. After examination of P.W.1, the petitioner was absent and non-bailable warrant was issued against the petitioner. After recalling the non-bailable warrant, the petitioner also filed a petition under Section 205 of the Criminal Procedure Code in Cr.M.P.No.1462 of 2021. By an order dated 21.10.2021, the learned Magistrate allowed the petition on condition that the petitioner shall appear before the evidence when his appearance necessary and questioning and final judgment or whenever the learned Magistrate directed to appear, he must appear before the Trial Court. Immediately after allowing the said petition, the present Criminal Original Petition has been filed on 16.12.2021 for transfer of the case.

5. The learned Counsel for the petitioner also raised a ground that when the petitioner proceeded to attend the trial, he was threatened by the respondent and his Counsel, since the learned Counsel, who appearing for the respondent is a Bar President. Therefore, the petitioner lodged a complaint before the Trial Court and the same was forwarded to the Inspector of Police, Rameshwaram Town Police Station and the petitioner was issued CSR 51 of 2021. Though the petitioner was issued CSR, thereafter, no FIR has been registered as against the accused persons.

6. Therefore, the present Criminal Original Petition is nothing but only to drag the proceedings, it has been filed. Hence, this Court finds no ground to transfer the trial from the file of the learned Judicial Magistrate, Rameswaram to any other Court. However, the Trial Court is directed to dispose of the trial within a period of six months from the date of receipt of a copy of this order.

With the above direction, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petition is also closed.

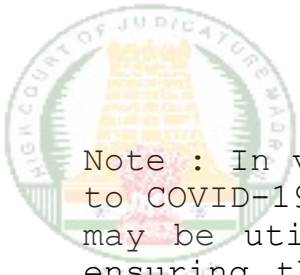
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Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Judicial Magistrate,
Rameshwaram.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-5094[F] dated 09/02/2022)

+1 CC to M/s.M.KANNAN, Advocate (SR-4881[F] dated 08/02/2022)

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MGJ(01.03.2022) 3P 4C