



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.01.2022

PRONOUNCED ON : 25.03.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

WEB COPY

Crl.O.P. (MD)No.18585 of 2019

and

Crl.M.P. (MD)No.10920 of 2019

C.K.Chidambaram : Petitioner/Respondent/Accused

Vs.

S.Arunagiri : Respondent/Petitioner/Complainant

PRAYER : Criminal Original Petition has been filed under Section 407 Cr.P.C, to withdraw the case in S.T.C.No.434 of 2018, on the file of the Judicial Magistrate cum District Munsif, Thiruvadanai, Ramanathapuram District and transfer the same to the Fast Track Court No.I, Madurai

For Petitioner : Mr.I.Saliyakhan

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed, invoking Section 407 Cr.P.C., seeking orders to withdraw the case in S.T.C.No.434 of 2018, pending on the file of the District Munsif -cum-Judicial Magistrate, Thiruvadanai, Ramanathapuram District and transfer the same to the Fast Track Court No.I, (Magisterial Level), Madurai.

2. The petitioner is the accused in S.T.C.No.434 of 2018, on the file of the the District Munsif -cum-Judicial Magistrate, Thiruvadanai.

3. The respondent/complainant has filed a complaint under Section 200 Cr.P.C., against the petitioner herein for the offences under Section 138 r/w 142 of the Negotiable Instruments Act and the case was taken on file in S.T.C.No.434 of 2018 and the same is pending on the file of the the District Munsif-cum-Judicial Magistrate, Thiruvadanai. According to the petitioner, one Sithiravelu has filed a similar petition for the offences under Section 138 r/w 142 of the Negotiable Instruments Act against him and the same was taken on file in S.T.C.No.129 of 2018 and the same is pending on the file of the Fast Track Court No.I, (Magisterial Level), Madurai.



4. The case of the respondent/complainant is that the petitioner has borrowed a sum of Rs.10,00,000/- in several instalments till 25.03.2018, that though the petitioner had agreed to repay the loan amount within three months, he has not repaid the same, that when the amount was demanded by the respondent/complainant, the petitioner has issued a cheque bearing No.585240, dated 13.08.2018 for Rs.10,00,000/- drawn on State Bank of India, Mylaudy Branch, Kanyakumari Branch, that when the cheque was presented for collection on 13.08.2018, the same was returned for want of sufficient funds in the bank account of the accused, that the complainant has then sent a legal notice dated 23.08.2018 demanding the payment of amount covered by the cheque, that the notice was returned as not claimed and that since the petitioner has not chosen to pay any amount, the respondent was constrained to file the above complaint under Section 200 Cr.P.C.

5. The case of the complainant in S.T.C.No.129 of 2018 (R.Sithiravelu) is that the petitioner/accused has been running the St.John's Institute of Nursing, Bangalore, that the petitioner approached the said complainant and borrowed a sum of Rs.10,00,000/-, that the petitioner has issued a cheque bearing No.585239, dated 06.11.2017 for Rs.10,00,000/- drawn on State Bank of India, Mylaudy Branch, Kanyakumari District, that when the cheque was presented for collection, the same was returned with an endorsement as "Refer to Drawer", that the complainant has then sent a legal notice dated 20.11.2017, but the same was returned as "Not claimed" and that since the petitioner has not chosen to pay any amount, the complainant was constrained to prefer a complaint under Section 138 r/w 142 of the Negotiable Instruments Act.

6. The main contention of the petitioner is that the petitioner has borrowed amounts from the said R.Sithiravelu, real estate owner, that thereafter he settled the amount, that thereafter the said Sithiravelu along with Gopalakannan, Kannan and Saravanan came to the petitioner's house in Bangalore with some rowdy elements and threatened him and had taken 5 blank cheques, that all of them came to Mylaudy house and threatened to repay Rs.50,00,000/-, that the petitioner gave a complaint to the Superintendent of Police, Nagercoil on 27.09.2017, that the said Sithiravelu appeared before the police officials and on 29.09.2017, the said Sithiravelu has given a letter undertaking not to threaten the petitioner, that thereafter the said Sithiravelu has filed a private complaint for the alleged dishonour of cheque and is pending in S.T.C.No.129 of 2018, that the said Sithiravelu has then set up his friend Arunagiri to file another case for dishonour of cheque before the Magistrate Court, Thiruvadanai, that one Balamurugan has also filed a private complaint before the Fast Track Court No.II, Madurai, that the said Sithiravelu had misused the five cheques taken from the petitioner and has already filed three dishonour of cheque cases and that since the petitioner, being a resident of Karnataka State, the case in



S.T.C.No.434 of 2018, pending on the file of the Judicial Magistrate, Thiruvadanai may be withdrawn and transferred to the Court of Fast Track Court No.I, (Magisterial level), Madurai.

7. Despite the receipt of Court notice, the respondent has not turned up.

8. As rightly pointed out by the learned Counsel for the petitioner, the respondent herein has filed the case in S.T.C.No.434 of 2018 in October 2018, whereas the said Sithiravelu has filed the case in S.T.C.No.129 of 2018 on 02.01.2018. The learned Counsel for the petitioner would submit that prior to filing of the above complaints, the petitioner has preferred a complaint before the Superintendent of Police, Kanyakumari District at Nagercoil on 27.09.2017, that in the enquiry conducted on 29.09.2017, the said Sithiravelu has appeared before the Deputy Superintendent of Police and gave a statement that the petitioner had taken a loan of Rs.53,00,000/-, that after deducting the payment of Rs.10,50,000/-, there is a balance of Rs.42,50,000/- and that he undertakes not to interfere or harass the petitioner. It is also evident from the records that the petitioner has also sent a letter to the Branch Manager of State Bank of India, Mylaudy, wherein he has specifically stated that the accused had taken five blank cheques by threatening him and requested the bank authorities to block the five cheques, if received for collection, on 11.10.2017.

9. As rightly pointed out by the learned Counsel for the petitioner, in the complaint lodged before the Superintendent of Police, the petitioner has specifically mentioned the particulars of the five cheques taken from him and that the two cheques, which are the subject matter of cases in S.T.C.NO.129 of 2018 and S.T.C.No.434 of 2018, find place in the complaint lodged with the Superintendent of Police. As already pointed out, the petitioner has also produced the statement given by Sithiravelu before the Deputy Superintendent of Police, wherein he had admitted that the petitioner had paid Rs.10,50,000/- and he has to pay the remaining amount of Rs.42,50,000/- and since the petitioner has sought for six months time for returning the balance amount, he undertakes that he will not harass the petitioner.

10. Whether the cheques were taken from the petitioner by threatening or whether the statutory presumption has arisen in favour of the complainant therein are the matters that cannot be gone into at this state and are matter for trial. As rightly pointed out by the learned Counsel for the petitioner, the petitioner has mentioned the particulars of the cheques in his complaint letter dated 29.09.2017 and with respect to two cheques found therein, the above private complaints came to be filed.

11. Considering the defence taken by the petitioner and the other facts and circumstances, this Court is of the view that to



find out the truth and to secure ends of justice, all the cases have to be tried by the same Court. As rightly contended by the learned Counsel for the petitioner, no prejudice would be caused to the complainants, if S.T.C., case pending on the file of the Judicial Magistrate Court, Thiruvadanai is transferred to the file of the Fast Track Court No.I (Magisterial Level), Madurai. Hence, this Courts decides that the case in S.T.C.NO.434 of 2018 pending on the file of the District Munsif-cum-Judicial Magistrate, Thiruvadanai is ordered to be withdrawn from the file of the District Munsif-cum-Judicial Magistrate Court, Thiruvadanai and transfer the same to the Fast Track Court No.I (Magisterial Level), Madurai and the learned Judicial Magistrate, after taking the above said S.T.C.No.434 of 2018 on file, is directed to conduct the trial of all the cases.

12. In the result, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

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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 cum District Munsif,
Thiruvadanai, Ramanathapuram District
2. The Judge, Fast Track Court No.I, (Magisterial Level),
Madurai.
3. The Chief Judicial Magistrate, Madurai.

+1 CC to M/s.I.SALIYAKHAN, Advocate (SR-14740[F] dated 28/03/2022)

CrI.O.P. (MD) No.18585 of 2019
25.03.2022

MGJ(19.04.2022) 4P 5C

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