



*Crl.O.P.Nos.22262 & 22263 of 2021
and Crl.MP.Nos.19443 & 19447 of 2021*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.Nos.22262 & 22263 of 2021
and
Crl.MP.Nos.19443 & 19447 of 2021

S.Gayathri Devi

... Petitioner in both Crl.OPs.

-Vs-

P.Senthilkumar

... Respondent in both Crl.OPs.

Prayer in both Crl.OPs: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, praying to transfer the case in C.C.Nos.5520 of 2020 & 5724 of 2018 respectively from the file of Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam Complex, Egmore, Chennai-600 003 to the Special Judicial Magistrate, Attur, Salem District.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.P.Singaram



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COMMON ORDER

These Criminal Original Petitions have been filed by the petitioner seeking to transfer the proceedings in C.C.Nos.5520 of 2020 & 5724 of 2018 respectively from the file of Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam Complex, Egmore, Chennai-600 003 and transfer to the Special Judicial Magistrate Court, Attur, Salem District.

2. The petitioner in both the petitions are one and the same. The petitioner is the complainant in both the above cases, which have been filed against the respondent for the offence under Section 138 of The Negotiable Instruments Act. When the cases were pending before the learned Special Judicial Magistrate, Attur, the petitioner has filed two cases for the offence under Section 138 of The Negotiable Instruments Act. One of the cases was filed by her with the Special Judicial Magistrate Court, Attur in STC.No.46 of 2019. The petitioner was working at Chennai at that point of time, when the other cheques are bounced and hence, she filed an another complaint before the Metropolitan Magistrate, (II Fast Track Court) Magistrate level, Allikulam, Egmore, Chennai in C.C.No.5724 of 2018. Before filing these petitions, the petitioner had already filed a transfer application in



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Crl.OP.No.381 of 2020 seeking to transfer C.C.No.5724 of 2018 to the file of the learned Special Judicial Magistrate, Attur, Salem and to try it along with STC.No.46 of 2019, which was already pending there. The respondent also has filed a petition in Crl.OP.No.29356 of 2019 seeking to withdraw STC.No.46 of 2019 from the file of the Special Judicial Magistrate, Attur, Salem District and transfer the same to the Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam, Egmore, Chennai to be tried along with C.C.No.5724 of 2018. Both the above petitions were taken up together on 29.07.2020 and a common order has been passed. By virtue of the said order, the transfer petition filed by the respondent in Crl.OP.No.29356 of 2019 was allowed and the petition filed by the petitioner in Crl.OP.No.381 of 2020 was dismissed. In pursuant to the said order, the case pending in STC.No.46 of 2019 was transferred to the Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam, Egmore, Chennai and the same is pending.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent. Perused the entire materials available on record.



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4. The learned counsel for the petitioner submitted that at the time when the petitioner filed the petition in Crl.OP.No.381 of 2020, it was the Covid time and hence, the petitioner cannot make his appearance effectively and conduct the petition filed by her. Without hearing the petitioner, the earlier order was passed in Crl.OP.Nos.29356 of 2019 & 381 of 2020. After the petitioner got married, she had undergone a surgery, due to which, her health condition is also very much affected and hence, she left her job and went back to her native place at Attur. Due to the aforesaid reason, the petitioner found difficult to travel from Attur to Chennai to conduct the case and hence, the petitions filed by the petitioner should be allowed.

5. The learned counsel for the respondent submitted that the earlier petition filed by the petitioner in Crl.OP.No.381 of 2020 was ended in dismissal and hence, there is no scope for a second application for transfer on the same grounds. The Chief examination of the petitioner is over and now the matter stands for cross-examination. If the petitioner can make her presence on only one day, it would be convenient for the respondent to finish the cross-examination and thereafter, the appearance of the petitioner is not necessary. At this stage, if the case is transferred, that would affect the



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proceedings very much. Hence, this Criminal Original Petitions should be dismissed.

6. The petitioner has filed two cases against the respondent for the offence under Section 138 of The Negotiable Instruments Act. She had filed a petition before the Special Judicial Magistrate Court, Attur, which got numbered as STC.No.46 of 2019 and the other case before the Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam, Egmore, Chennai in C.C.No.5724 of 2018. By stating similar such circumstances, the respondent had also filed a transfer application in Crl.OP.No.29356 of 2019 to transfer STC.No.46 of 2019 from the file of Special Judicial Magistrate, Attur, Salem District and transfer it to the learned Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam, Egmore, Chennai. The said petition was already allowed and consequently, the case records in STC.No.46 of 2019 pending on the file of the Special Judicial Magistrate Court, Attur was withdrawn and got transferred to the file of the learned Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam, Egmore, Chennai.



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7. Though the learned counsel for the petitioner submitted that the earlier order was not passed on merits. The petitioner had made similar submission on an earlier occasion also in Crl.OP.No.29356 of 2019 and the same was not appreciated. Admittedly, the petitioner has not challenged the order dated 29.07.2020 passed in Crl.OP.Nos.29356 of 2019 and 381 of 2020. Now the status of the case is for cross-examination of PW1 (who is the petitioner herein) in both the cases. Instead of transferring the case once again, I feel a direction can be given for fixing a date for cross-examination of PW1. This would avoid the repeated appearance of the petitioner before the learned Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam, Egmore, Chennai. The learned counsel for the respondent also submitted that the respondent would co-operate with the Court and complete the cross-examination, whenever the petitioner makes her appearance for the same.

8. Taking into consideration of the above submissions, I feel it is appropriate to direct the learned Metropolitan Magistrate (II Fast Track Court) Magistrate level, Allikulam, Egmore, Chennai to take up both the cases simultaneously and finish the cross-examination of PW1 in both the



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cases on or before 21.04.2023, when the matter is posted for next hearing before the Trial Court. As submitted by the respondent today, the learned counsel for the respondent should do the needful to complete the cross-examination of the petitioner/PW1 in both the cases on 21.04.2023 itself.

9. With the above observations, these Criminal Original Petitions are disposed of. Consequently, connected Miscellaneous Petitions are closed.

22.02.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation Case: Yes/No
kmi

To

1. The Special Judicial Magistrate,
Attur, Salem District.
2. The Metropolitan Magistrate,
(II Fast Track Court) Magistrate level,
Allikulam Complex, Egmore,
Chennai-600 003.



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