



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Criminal Appellate Jurisdiction

Wednesday, the Twenty Second day of November Two Thousand and Twenty
Three

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD). No.12604 of 2023
in
CRL OP(MD).13946/2018

K.V. Sajin
S/o. Kumaresan ... Petitioner/Petitioner

Vs

V. Chenthil Kumar
S/o.Vethanayagam ... Respondent/Respondent

Prayer :-

Criminal Miscellaneous Petition is filed U/S.482 of CRPC to modify the common order passed by this Honble Court in Crl.O.P(MD).No.13946 of 2018 dt 12.12.2019 so far as relating to retransfer of C.C.No.21 of 2018 to Judicial Magistrate No.II, Kulithurai.

Prayer in CRL OP(MD).13946/2018 :

This Original petition is filed Under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned complaint in STC.No.118/2017 on the file of the Judicial Magistrate No.I, Kuzhithurai and quash the same.



ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s. R.S.Sivaram, Advocate for the Petitioner and No Appearance, for the respondent, this Court made the following order:

“The above petition has been filed seeking orders to modify the common order passed by this Court in CrI.O.P.(MD)Nos.13893 and 13946 of 2018 dated 12.12.2019 so far as relating to re-transfer of C.C.No.21 of 2018 to the file of the Judicial Magistrate No.II, Kuzhithurai.

2. Earlier, the petitioner has filed two petitions in CrI.O.P.(MD)Nos.13893 and 13946 of 2018 to quash the complaint in S.T.C.Nos.133 and 118 of 2017 and this Court, vide common order dated 12.12.2019, has passed the following order;

“These petitions have been filed to quash the impugned complaint in STC.Nos.133 & 118 of 2017 on the file of the Judicial Magistrate No.I, Kuzhithurai. In both the petitions, the petitioner is one and the same.

2.The learned counsel for the petitioner would submit that the petitioner's father viz., Kumaresan is doing Crusher business and he borrowed a sum of Rs.5,00,000/- from the respondent/defacto complainant for developing his business on 10.06.2015 and in respect of the loan transaction, the petitioner/accused had issued two cheques as security purpose. Further, the petitioner's father had paid a sum of Rs.5,000/- daily to the respondent/defacto complainant towards repayment and the said loan was repaid and closed on 17.09.2015 itself. Even though, the entire loan amount was repaid by the petitioner's father, the two cheques, which were given towards security, were not returned to the petitioner and the complainants, who are brothers with a



mala fide intention to extract exorbitant money from the petitioner had misused the cheques and filed the complaint.

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3.The learned counsel further submitted that on the complaint given by the petitioner, a case in Crime No.434 of 2017 was registered by the Puthukadai Police, Kanyakumari for the offences under Sections 341, 294(b), 506(i) IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. After completion of investigation, the Puthukadai police filed a final report and the same was taken cognizance in C.C.No.21 of 2018 on the file of the learned Judicial Magistrate No.II, Kuzhithurai. He further submitted that the continuance of the criminal proceeding as against the petitioner is nothing, but, clear an abuse of process of law.

4.Per contra, the learned counsel for the respondents would submit that the allegations against the petitioner in C.C.No.21 of 2018 is in respect of two cheques bearing in Cheque Nos.081482 and 081484, which are the subject cheques in the present S.T.C.Nos. 133 and 118 of 2017. He would further submit that the complaint in Crime No.434/2017 is given only to raise a defence in the cheque cases. The respondents are contesting the case in C.C.No.21/2018.

5.The learned counsel would further submit that the defence that has been taken by the petitioner in the 138 proceedings in STC.No.133/2017 and STC.No.188/2017 pending on the file of the learned Judicial Magistrate No.I, Kuzhithurai, is the main allegation that has been made against the petitioner in the complaint given by the petitioner to the police and which is now pending in C.C.No.21 of 2018 on the file of the learned Judicial Magistrate No.II, Kuzhithurai and the cases of this nature are commonly called in criminal law as cross cases and such cases should be tried and disposed of by the same Court and that such cases should be tried in quick succession in order to avoid conflicting judgment being delivered upon similar facts and thereby he would



seek that instead of quashing the proceedings, a direction may be issued, so that both the cases may be tried quick succession by one of the same Court.

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6.This Court has gone through the materials available on records.

7.In the present case, the defence taken by the petitioner and the evidence that is going to be relied on by the petitioner to substantiate the cases is the complaint, which has been made in C.C.No.2018.

8.Admittedly, S.T.C.No.133 of 2017 and S.T.C.No.188 of 2017 pending on the file of the learned Judicial Magistrate, No.I, Kuzhithurai and C.C.No.21 of 2018 pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai are cross cases in respect of the very same subject. Thereby either one of the cases can be transferred to the other Court to be tried in quick succession in order to avoid conflicting the judgment being delivered upon similar facts.

9.The grounds raised are matter for evidence and thereby the proceedings in S.T.C.No.133 of 2017 and S.T.C.No.118 of 2017 cannot be quashed. This Court is of the opinion that in such situation, the procedure to be followed should be as per the dictum laid down in the case of Nathi Lal and other Vs. State of U.P and another reported in 1990 (Supp) SCC 145. The relevant paragraph No.2 of the said order reads as follows:

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases,



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he can rely only on the evidence recorded in that particular case.

The evidence recorded in the cross case cannot be looked into. Nor

can the judge be influenced by whatever is argued in the cross case.

Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But, both the judgments must be pronounced by the same learned Judge one after the other."

10. In view of the same, the learned Judicial Magistrate No.II, Kuzhithurai is directed to transfer the entire records pertaining to the case in C.C.No.21 of 2018 to the file of the learned Judicial Magistrate No.I, Kuzhithurai to be tried along with S.T.C.Nos.133 and 118 of 2017.

11. At this juncture, the learned counsel appearing for the petitioner prayed that the personal appearance of the petitioner before the trial Court, may be dispensed with.

12. Accepting the said submission, 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.

13. 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 Supreme Court of India, in State of Uttar Pradesh Vs. Shambunath Singh, reported in 2001 (4) SCC 667.

14. With the above directions, both the petitions are closed. Consequently, connected miscellaneous petitions are closed."

3. As per the above said order, the learned Judicial Magistrate No.II, Kuzhithurai, transferred the case in C.C.No.21 of 2018, in which, the petitioner is the defacto complainant, to the file of the Judicial Magistrate No.I, Kuzhithurai and the same was renumbered as C.C.No.195 of 2020 and is pending on the file of the Judicial Magistrate No.I, Kuzhithurai.

4. When the matter is taken up for hearing today, the learned counsel appearing for the petitioner submitted that the petitioner inadvertently filed the above petitions stating that the case in C.C.No.21 of 2018 is pending before the Judicial Magistrate No.II, Kuzhithurai, and the casess in S.T.C.Nos.118 and 133 of 2017 are pending before the Judicial Magistrate No.I, Kuzhithurai, but actually the cases in S.T.C.Nos.118 and 133 of 2017 are pending before the Judicial Magistrate No.II, Kuzhithurai and hence, there is some delay in transferring the case and that therefore, he filed the present petition to modify the common order passed in CrI.O.P.(MD)Nos.13893 and 13946 of 2018.

5. In the present petition, this Court issued direction to take notice to the respondent. But even after the receipt of notice, he did not appear. Once again, this

Court issued direction to the learned Government Advocate (Criminal Side) to serve



notice to the respondent and he also received the notice and did not appear before this Court.

6. In the affidavit filed in support of this petition, it is stated as follows,

“6. I submit that the STC No.118 of 2017 and STC No.133 of 2017 is actually pending before JM II Kulithurai since the cause title in the petition copy showed as JM I, Kulithurai, I also filed it as JM I instead of JM II Kulithurai and the error was recently noticed by the concerned Judicial Magistrate and the court directed me to get clarification of the order from this Hon'ble Court.

7. I, submit that after the transfer of CC No.21 of 2018 to the JM I, Kulithurai, the Hon'ble court did not commenced the trial in the case till date and the JM No.II Kulithurai is now proceeding for trial in STC cases without taking the case in CC No.21 of 2018 and so it is just and necessary that the case in CC No.21 of 2018 transferred to JM No.1, Kulithurai as per the order of this Hon'ble Court in CRL OP No.13893 & 13946 of 2018 dt 12.12.2019, be ordered to be retransferred to JM No.II, Kulithurai to try along with STC No.118 of 2017 and STC No.133 of 2017 and in this regard only this modification petition is filed before this Hon'ble court.”

7. Considering the above facts and circumstances and also the submission made by the learned counsel appearing for the petitioner, this Court is inclined to withdraw the C.C.No.195 of 2020 from the file of the Judicial Magistrate No.I, Kuzhithurai and to transfer the same to the Judicial Magistrate No.II, Kuzhithurai.



8. In the result, this Criminal Miscellaneous Petition is allowed and the learned Judicial Magistrate No.I, Kuzhithurai is hereby directed to transfer the entire records pertaining to the case in C.C.No.195 of 2020 to the file of the Judicial Magistrate No.II, Kuzhithurai and after receiving the case records, the learned Judicial Magistrate No.II, Kuzhithurai, is directed to take the petition on file and conduct joint trial of the cases in C.C.No.195 of 2020 and S.T.C.Nos.133 and 188 of 2017."

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/12/2023

Sub Assistant Registrar(CS)

CSM

To

1. The Judicial Magistrate No.I,
Kuzhithurai.
2. The Judicial Magistrate No.II,
Kulithurai.
3. The Additional Public prosecutor,
Madurai Bench of Madras High Court,
madurai.



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ORDER DATED : 22/11/2023

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ORDER

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CRL MP(MD). No.12604 of 2023

in

CRL OP(MD).13946/2018

SI (14.12.2023) 9P/ 4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.