



CrI.O.P.(MD)No.10092 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CrI.O.P.(MD)No.10092 of 2024

and

CrI.M.P.(MD)No.6842 of 2024

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.... Petitioner

versus

S.Jerald Raja

.... Respondent

Petition filed under Section 407 Cr.P.C. seeking to transfer the calender case in C.C.No.38 of 2018 from the file of the Judicial Magistrate, Natham, to any other Magistrate Court.

For Petitioner : Mr.R.Sundar

ORDER

This Criminal Original Petition has been filed by the accused in C.C.No.38 of 2018, seeking to transfer the case in C.C.No.38 of 2018 from the file of the learned Judicial Magistrate, Natham, to any other Magistrate Court.



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2. The petitioner is facing the criminal proceedings in C.C.No.38 of 2018 for the offence punishable under Section 138 of the Negotiable Instruments Act. The said case was registered as against the petitioner by the respondent in the year 2018. The petitioner/accused failed to cross examine P.W.1, who was present before the Court on 13.07.2023. Due to personal inconvenience, the Senior Counsel on record has failed to appear before the Court on 13.07.2023. The trial Court has compelled the Junior counsel, who was present in the Court, to proceed with the case and to cross examine P.W.1, who was present in the Court. The Junior counsel has expressed that the Court is not fair and compelled him to cross examine in the absence of his senior counsel. Since the learned counsel for the petitioner/accused has represented that the Court is not fair and has not provided sufficient opportunity, the Presiding Officer appears to have informed the counsel to move the Principal District Court to transfer this case pending on the file of the learned Judicial Magistrate, Natham, to some other court. An endorsement has also been made in the diary addressed to the Hon'ble Principal District Judge, Dindigul, to transfer the case to some other Court. Thereafter, the case was adjourned to 14.08.2023, 30.10.2023 and 20.11.2023, by addressing the letter to the Principal District Judge, Dindigul on 13.07.2023. On 20.11.2023, the Presiding Officer refused to receive the memo and failed to provide opportunity to



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the accused's counsel. With this averment, the petitioner/accused has already moved a petition before the learned Principal Sessions Judge, Dindigul, in Tr.CrI.M.P.No.4355 of 2023 under Section 408 Cr.P.C. to transfer the case in C.C.No.38 of 2018 from the file of the learned Judicial Magistrate, Natham, to any other Court. The learned Principal Sessions Judge, Dindigul, by order dated 08.04.2024, rejected the said petition seeking transfer. Challenging the same, the petitioner has filed this Criminal Original Petition under Section 407 Cr.P.C.

. 3. The learned counsel for the petitioner submits that the learned trial Judge has pre-determined his mind and he himself made a request to the learned Principal District Judge, Dindigul, to transfer the case. Though the counsel has expressed certain inconvenience to cross examine the witnesses on 13.07.2023, the trial Court has compelled the junior counsel to cross examine the respondent/complainant and thereby, the Court has acted in a biased manner. In the event, if the trial is allowed to continue with the same Court, the petitioner/accused may be prejudiced.

4. This Court considered the submission of the learned counsel for the petitioner and also perused the materials placed on record.



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5. The case in C.C.No.38 of 2018 is on the complaint instituted by the respondent under Section 138 of the Negotiable Instruments Act. The said case is pending from the year 2018. The complainant was examined in chief on 26.02.2021, but, he was not cross examined. Thereafter, P.W.2 was examined and the evidence was closed. The case was posted for questioning on 30.03.2021 and on that day, questioning was also over. After questioning, the petitioner/accused, by changing the counsel, filed an application before the Court on 01.04.2021, seeking to recall the prosecution witnesses and to re-open the evidence. The said application was allowed by the Court. P.W.1 and P.W.2 were present for cross examination on 12.07.2023, however, adjournment was sought for on behalf of the accused. The accused's counsel has obtained several adjournments and the petitioner/accused has also changed several counsels in between 2018 and 2023. In the meantime, on the application filed by the respondent/complainant, this Court, by its order dated 21.11.2023, in CrI.O.P.(MD)No.20732 of 2023, has issued a direction to the trial Court to conclude the trial within a period of three months. However, till date, the trial is pending.



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6. It appears that the petitioner/accused has originally engaged one Annadurai as an Advocate. The case was followed through one Rajendra Prasath. Thereafter, the petitioner/accused changed the counsel and one Prem Anand had entered appearance. Subsequently, one Agnel Rajan and Rajendra Prasath have entered appearance on behalf of the petitioner/accused.

7. Therefore, this Court is of the view that the reasonings given by the petitioner/accused are not sufficient to transfer the case in C.C.No.38 of 2018 from the file of the learned Judicial Magistrate, Natham, to some other Court and this will also create a bad precedent. Hence, this Court is not inclined to entertain this Criminal Original Petition.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

08.07.2024

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NCC : Yes / No.

Internet: Yes / No.

Index : Yes / No.



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B.PUGALENDHI, J.

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To

1. The Judicial Magistrate Court,
Natham.

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