

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER
TRANSFER CRIMINAL PETITION No.5 OF 2023

ORDER:

This Transfer Criminal Petition is filed by the petitioner/accused under Section 407 of Code of Criminal Procedure (in short "Cr.P.C.") seeking transfer of C.C.No.438 of 2021 on the file of Special Magistrate -III at Visakhapatnam to III Additional Junior Civil Judge cum III Additional Metropolitan Magistrate Court, Visakhapatnam.

2. The case of the petitioner in brief is that respondent No.1 filed complaint against him under Section 138 read with Section 142 of Negotiable Instruments Act vide C.C. No.438 of 2021 whereas, he filed Civil Suit in O.S. No.329 of 2020 on the file of III Additional Junior Civil Judge at Visakhapatnam for grant of mandatory injunction directing respondent No.1 to handover two (02) blank signed cheques said to be issued by him as a security at the time of borrowing money.

3. The petitioner submits that respondent No.1 also filed O.S. No.353 of 2020 on the file of II Additional Junior Civil Judge, Visakhapatnam, against him and his wife for recovery of an amount of Rs.18,35,336/- (Rupees Eighteen Lakhs Thirty-Five Thousand Three Hundred and Thirty-Six only) with interest. The main contention of the petitioner is that his defence in all the suits is similar, due to that all the cases have to be tried by one Court to avoid conflict of judgments and then he moved an application before Principal District Judge, Visakhapatnam to transfer the case, which was dismissed and then he filed petition before this Court.

4. I have heard learned counsel Ms. M. Sandhya Deepthi, representing on behalf of Mr. Nagaraju Putchala, learned counsel for the petitioner. None appeared for respondent No.1, though postal track report has shown that notice sent to him is delivered.

5. The learned counsel representing the petitioner would submit that the petitioner filed suit in O.S. No.329 of

2020 for mandatory injunction and for return of blank signed cheques by respondent No.1, the defence of the petitioner in both suits is similar. She would further submit that respondent No.1 also filed O.S. No.353 of 2020 for recovery of money on false grounds and in all the suits, petitioner raised the same defence, due to that all the cases have to be disposed of by one Court.

6. The Hon'ble Apex Court in **Nahar Singh Yadav Vs. Union of India**¹, at para 29 held which reads as under:-

"29. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 CrPC should be exercised, it is manifest from a bare reading of subsections (2) and (3) of the said section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. Some of the

¹ (2011) 1 SCC 307

broad factors which could be kept in mind while considering an application for transfer of the trial are:

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and nonofficial witnesses;(iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.”

7. In the present case, petitioner seeking the transfer of criminal case to try along with Civil case in O.S. No.329 of 2020

which he filed for seeking relief of mandatory injunction against respondent No.1 for return of his blank signed cheques. The mode of proof in criminal cases is beyond reasonable doubt basing on presumption under Section 139 of Negotiable Instruments Act. Whereas mode of proof in civil cases is preponderance of probabilities, due to that the criminal complaint filed under Section 138 of Negotiable Instruments Act, which prescribes penal punishment cannot be clubbed with civil case though the defence of the petitioner in both suits may be similar. In view of rules of burden of proof in Civil and Criminal case proceedings, there cannot be any conflicting judgments if both cases are tried by different Courts.

8. This Court did not find any illegality or irregularity in the orders passed by the learned Metropolitan Sessions Judge-I Additional District & Sessions Judge, Visakhapatnam in Tr.Crl.M.P. No.2 of 2022 dated 11.10.2022, dismissing the petition filed by the petitioner seeking transfer of the case. There are no grounds to consider the prayer of the petitioner seeking for transfer.

8. In the result, this Transfer Criminal Petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions if any, stand closed. The interim stay if any, granted shall stand vacated.

JUSTICE BANDARU SYAMSUNDER

Date:19.06.2026

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