

**(1951) 11 MAD CK 0011**

**In the Madras High Court**

**Case No :** Criminal Miscellaneous Petition No. 1925 of 1951

R.M. Ramachari

APPELLANT

Vs

M.B. Ramachari and Another

RESPONDENT

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**Date of Decision :** 15-11-1951

**Acts Referred:**

**Citation :** AIR 1954 Mad 143 : (1952) 1 MLJ 166

**Hon'ble Judges :** Ramaswami, J

**Bench :** Single Bench

**Advocate :** K.V. Srinivasa Aiyar, P.P, for the Appellant; V.S. Chandersekharan, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Ramaswami, J.—This is a petition filed by one R. M. Ramachari, a resident of Mathurai, for transferring a criminal case filed by him, in the first instance, against his agent, another Ramachari, in the court of the Stationary Sub Magistrate, Amaluru subsequently transferred to the file of the First Class Joint Magistrate, Rajahmundry.

2. The facts are: This petitioner, Ramachari, according to himself, is a partner of a registered firm of R. M. Ramachari & Co., carrying on handloom cloth business in Mathurai. This petitioner has got a branch at Dwarapudi in East Godavari district. The accused, another Ramachari, is said to have been his agent and clerk in charge of the branch at Dwarapudi. In these circumstances, this petitioner filed a complaint against that agent before the Second Class Magistrate at Alamaru in C. C. No. 338 of 1951, for offence of criminal breach of trust and misappropriation under Sections 403 and 408, I. P. C. It is significant that this complaint relates to

a matter which can be proved only by people resident in

Dwarapudi and around, because I find the following list of witnesses attached to the complaint.

1. N. R. Arumugam Pillai, Cloth Merchant, Seethamma Lane, Rajahmundry.
2. Nagalla Subbarao, House owner of complainant's cloth shop, Dwarapudi.
3. S. Papanna Chetty, Cloth Merchant, Rajahmundry.
4. Vedisetty Seshayya, son of Redriah, Chirala.
5. Andi Mudaliar, cloth merchant, Dwarapudi.
6. V. Govindaraju, cloth merchant, Dwarapudi.
7. Grandhi Suryanarayana, son of Ramachandrudu, Dwarapudi.
8. Chunduri Venkateswaralu, son of Kishtama, cloth merchant Chirala.
9. Grandhi Rayudu, son of Venkatasubbiah, cloth merchant, Chirala.

Then in the course of the enquiry, evidence seems to have been adduced that there was falsification of accounts also, apparently to cover up the

alleged criminal breach of trust and misappropriation, and obviously on the motion of this complainant, the Stationary Sub Magistrate, Alamaru has

sent up the papers to the Joint Magistrate, Rajahmundry, exercising first class powers. This accused has also been got served in Rajahmundry.

3. Before the trial could take place, and apparently for ulterior objects of his own, this complainant has suddenly found that the interests of both

parties and the ends of justice require that the case should be tried at Mathurai, and he has preferred this application on grounds which can only be

described as both vexatious and false. The affidavit in support states that since the offence committed by the accused happens to come also u/s

477A as a major one, a scrutiny of the entries in the account maintained is necessary for the disposal of the matter, and since the accounts and all

entries therein are in Tamil only, it will be expedient in the interest of justice that the case should be tried in a court familiar with the Tamil language.

The affidavit further goes on to say that many of the witnesses in the case are residents of places round of Mathurai town and it will be convenient

for the parties as well as witnesses to attend court in Mathurai instead of in a distant place. I need not point out that the first ground is a vexatious

ground because, if the presiding magistrate happens to be an officer who does not know Tamil, then there is ample provision for the entries being

translated into Telugu or into English with which language that presiding officer is bound to be familiar. Then, as regards the second point, I have

purposely reproduced the list of witnesses to show that, far from witnesses residing in Mathurai, they are residents in Rajahmundry, Dwarapudi

and Chirala and obviously, this second allegation is a thoroughly false one.

4. Then, the learned advocate stated that he filed this petition not only for his own comfort and convenience, but also for that of the accused, and

the accused represented by a lawyer in this court, disowns that soft impeachment and says that he does not want the case to be tried at Mathurai,

but is content to have the case tried in Rajahmundry, where he has been got served.

5. The learned Public Prosecutor naturally opposes the application on the principle that the fact that the presiding officer does not know Tamil (a

fact which has got to be proved) is no ground at all for transfer of the case in a multi-lingual State like the Madras presidency, while the criterion

for offences to be tried is the territorial jurisdiction prescribed in the Criminal Procedure Code.

6. In the result, there are no merits at all in this petition, as it is found to be a thoroughly frivolous and vexatious one, and in dismissing it, I must

observe that this is one of those cases where the provisions of Section 526 (6A) Cr. P. C., have got to be exercised by the High Court in order to

put an end to this type of petitions, intended merely for protracting the proceedings harass the opposite party and waste the time of the High Court.

I, therefore, direct the petitioner under Section 526 (6A) to pay, by way of compensation, to the learned Public Prosecutor and to the accused,

represented by an advocate here, a sum of Rs. 50 each, which I consider proper in the circumstances of the case.