

(2002) 04 KAR CK 0009

In the Karnataka High Court

Case No : Criminal Petition No. 94 of 2002

Smt. Susheela B.S.

APPELLANT

Vs

Maruthi Ferto Chemicals Limited

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2002) 5 KarLJ 401 : (2002) 4 RCR(Criminal) 655

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : A.Y.N. Gupta, for the Appellant; A. Hanumanthappa, for the Respondent

Final Decision : Allowed

Judgement

M.P. Chinnappa, J.—Heard Sri A.Y.N. Gupta, learned Counsel appearing for the petitioner and Sri A. Hanumanthappa, learned Counsel appearing for the respondent.

2. The brief facts leading to this petition are that the respondent herein filed a complaint against the petitioner for the offence punishable u/s 138 of the Negotiable Instruments Act which is registered as P.C. No. 23 of 2000 on the file of Additional Civil Judge (Junior Division) and Judicial Magistrate First Class, Hospet on the allegation that towards purchasing of fertilizer, the petitioner herein issued a cheque which was dishonoured when presented to the Bank and even after the service of statutory notice, the petitioner has not paid the amount. The Court has taken cognizance of the offence and directed issue of process to the petitioner. The petitioner filed this petition u/s 407 of the Cr. P.C. to transfer the case from the tile of Additional Civil Judge (Junior Division) and Judicial Magistrate First Class, Hospet to the Court at Tumkur on the allegation that the petitioner is resident of Tumkur and carrying on her business in Tumkur Town. She is suffering from hypertension and also back pain and that also her husband

has undergone bypass surgery and he is not in a position to travel. The distance between Hospet to Tumkur is 500 kms. and travelling is not good for her physically and in other respects also. The petitioner is a lady and therefore, she cannot travel alone without being accompanied by a male.

3. The respondent filed objections contending inter alia that the respondent has made out a prima facie case against the petitioner and the complaint is registered in C.C. No. 67 of 2001 and no ground is made out to transfer the case to the Court at Tumkur. The requirement of Section 407 is satisfied. The petitioner is liable to pay Rs. 88,400/- covered under the cheque. The respondent is having its place of business and is engaged in manufacture and sale of fertilisers at Hospet having customers throughout the State of Karnataka. The witnesses will have to travel from far-off places to attend the case. Thus, respondent would incur additional expenses to come to the Court and to give evidence and also to examine the witnesses. Therefore, he submits that the petition is liable to be dismissed.

4. The learned Counsel appearing for the petitioner submitted that the petitioner and her husband are suffering from illness and has produced medical certificates before this Court. I have perused the medical certificates and it is abundantly clear that the petitioner is suffering from hypertension, and also from backache and she was advised to approach the orthopaedician and a physician for the same. Similarly, her husband also has undergone bypass surgery and his medical certificates are also produced. The correctness of these documents are not disputed. Therefore, it is established that the petitioner is suffering from hypertension and backache and the distance to travel is 500 kms. It is also not in dispute that the petitioner is running her business in Tumkur when she issued a cheque at Tumkur towards payment of cost of fertilizers which was purchased and the said cheque was dishonoured. Hence, it is needless to say that Tumkur Court also has jurisdiction to try the case,

5. The learned Counsel for the petitioner further emphatically submitted that the petitioner has made out a case under Sub-section (c) of Section 407 of the Cr.P.C. He also submitted that Hon"ble Supreme Court time and again considering certain exigencies transferred the case to different places and to substantiate that argument, he has also placed reliance on a decision in Inder Singh and Others Vs. Kartar Singh, wherein their Lordships considering that the petitioner being poor and the complainant who is the only witness to be examined, ordered transfer of the case from Cuttack to Chandigarh.

In IV(2000) CCR 228 sc, it is held that the accused petitioner had undergone three operations including cancer of rectum. The Supreme Court was pleased to transfer the case pending at Ranchi to the Special Judge, CBI at Delhi for trial.

The learned Counsel further placed reliance on a decision reported in Neelam Kanwar Vs. Devinder Singh Kanwar, wherein their Lordships have held that being a lady, it is not convenient for her to appear at Chandigarh. Hence, the criminal

complaint was transferred to Mumbai. In that case, the application was opposed on the ground that if the transfer was allowed, he will have to travel all the way from Chandigarh to Mumbai. However, under the circumstance the Supreme Court was pleased to transfer the case.

In *Dharma Ram v. Ram Karan* 1990(3) Crimes 53 the Rajasthan High Court has held that the occurrence that took place, and that the accused and the witnesses belonged to dhani-Bada-Khet (Mau) which is hardly at a distance of 8 kms. from Srimadhapur, whereas, Neem-ka-Tharia is at a distance of 70 kms. from that place. The transfer of case to Srimadhapur will be convenient to both the parties. Accordingly, it was transferred.

This Court in (1988)16 (Kar.) 153, held that complaint filed at a place about 400 kms. away from where the accused lived, it was difficult for the accused to take trial at the place where the complaint was registered. Fair trial could only be held at the place convenient to the accused and at the place where most of the witnesses reside.

In *P.H. Metcalfe Vs. J. Watson*, it is held that convenience of the accused to be given preference.

In *Sohan Lal v. Gopal Singh* AIR 1926 Lah. 493 the Lahore High Court has held that convenience of the accused has to be considered rather than that of the complainant for transfer of the case.

The learned Counsel appearing for the respondent submitted that if the case is transferred at the request of the accused persons, the Court would be opening floodgates for all accused persons to seek transfer of the case from one Court to another with a view to cause inconvenience and to compel the complainant to withdraw the case. In support of his argument, the learned Counsel placed reliance on a judgment of the Supreme Court in *Ranjit Singh, Niranjan Singh and Karam Singh Vs. Popat Rambaji Sonavane and Others*, In that case the petitioner therein sought for transfer of the case on the solitary ground that the complainant's safety would be in danger if transfer was not granted. The Hon'ble Supreme Court held that the reason given was too nebulous a ground for transferring the case.

From this it is clear that the Court will have to consider the application for transfer of cases on the basis of its own merit and it cannot pass a blanket order for transfer of cases for mere asking by the accused persons. Hence, this submission has no force as far as this case is concerned.

In this case, as indicated above, transfer is sought on the ground that the petitioner is a lady, she is suffering from sickness and also her husband is not in a position to accompany her and the Court is situated at about 500 kms. away from where the petitioner is residing and both the Courts have concurrent jurisdiction to try the case u/s 138 of the Negotiable Instruments Act. Further, no prejudice would be caused to the complainant-respondent if the case is

transferred.

The learned Counsel for the respondent further stated that the complainant and witnesses will have to come from Hospet to Tumkur and if the case is adjourned the witnesses will have to come to the Court again and again spending heavy amount and wasting their time, thereby much inconvenience would be caused to them. This submission is not without any merit but the Court has to see the grounds urged in the case and weigh the same in their proper perspective before passing the order. In the event the transferee Court finds that the accused is seeking transfer on flimsy grounds, it can always either reject the same or impose costs. Therefore, having given my thoughtful consideration and for the reasons stated above, the petition deserves to be allowed.

In the result therefore, the petition is allowed.

C.C. No. 67 of 2001 pending on the file of Additional Civil Judge (Junior Division) and Judicial Magistrate First Class, Hospet is withdrawn and transferred to the Court of Principal Civil Judge (Junior Division) and Judicial Magistrate First Class, Tumkur with a direction to try the case himself or assign it to any other Additional Court having jurisdiction to try the case. The learned Court is directed to send all the records to the Court at Tumkur as indicated above.