

(2011) 04 KAR CK 0100
In the Karnataka High Court
Case No : Criminal Petition No. 2309 of 2011

Sri D.J. Ajithprasad

APPELLANT

Vs

D.G. Nagaraju

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309, 317, 407, 408
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 1 BC 346 : (2011) 5 KarLJ 640 : (2011) 3 KCCR 2424

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : K.A. Chandrashekara, for the Appellant;

Final Decision : Dismissed

Judgement

B.V. Pinto, J.—This petition u/s 407 Code of Criminal Procedure is filed seeking transfer of C.C. No. 436/2007 pending on the file of Addl. Civil Judge (Jr. Dn.) & JMFC, Turuvekere, to any other court within the session division of Tumkur District in the interest of justice.

2. From the order passed by the learned Sessions Judge and the other papers produced before this Court it is disclosed that the Respondent has filed a case against the Petitioner/accused u/s 138 of the N.I. Act for the recovery of cheque amount and the case is pending in C.C. 436/2007 art the fife of Addl. Civil Judge (Jr. Dn.) & JMFC., Turuvekere. In the said case before the trial Court complainant examined as FW.1 and Bank Managers have been expanded as FW.2 and FW.3 from the side of the complainant. It is alleged that the learned magistrate has not provided an opportunity to cross-examine PW.2 and 3 on the ground that accused counsel was not present on 28.05.2010 and 25.06.2010 and taken the cross-examination of PW.2 and 3 as and closed the side of complainant and posted the case to 13.06.2010 to record the statement of accused u/s 313 of Code of Criminal Procedure Due to Hi-health the Petitioner/accused counsel could not appear on 13.08.2010. Consequent the trial Court issued HBW against the

Petitioner/accused and posted the case to 25.08.2010. The Petitioner/accused engaged new counsel on 25.08.2010 and said new counsel has filed his vakaiath and filed an application to recall N.B.W. The learned magistrate levied penalty of Rs. 2,500/- and recalled N.B.W. and posted case to 07.09.2010. That on 07.09.2010 the application filed by the Petitioner/accused under 311 of Code of Criminal Procedure is allowed on payment of cost of Rs. 500/- for the examination of FW.1 and on that day FW.1 was not present and case posted on 29.09.2010. The Petitioner's counsel could not appear before Court on 29.09.2010 and on that day his counsel filed application u/s 317 of Code of Criminal Procedure and also an application u/s 309 of Code of Criminal Procedure for grant of IS days time. As the counsel was already engaged Mandya, Mysore and Shree rangapatna etc. On 29.09.2010 the learned Magistrate rejected both the applications and noted the cross-examination of FW.1 as nil and is sued NBW to accused/Petitioner and posted the case to 12.10.2010 for recording 313 Code of Criminal Procedure statement of accused.

3. The Petitioner therefore has Sled a petition u/s 408 Code of Criminal Procedure before the Sessions Judge, Tumkur to transfer the case to any other Court apprehending that the Magistrate has pre-detertriined the case and that no justice would be done to him.

4. The Respondent/complainant objected to the said prayer mainly on the ground that the application is filed to drag on the proceeding before the Trial Court.

5. The learned Sessions Judge alter giving proper hearing has rejected the prayer to transfer the case where after the Petitioner has filed this petition, u/s 407 Code of Criminal Procedure

6. From the submissions made by the Petitioner it is seen that for the complaint filed in the year 2007 the Petitioner has filed two Criminal Revision Petitions before the Sessions Court and a transfer petition whereas the order sheet shows that the plea was recorded on 14.11.2008 and the Petitioner was absent on 17.12.2008, 30.12.2008, 05.02.2009, 17.02.2009 and also on 28.05.2010 and several other dates. This clearly indicates that the Petitioner is not co-operating with the trail Court in the progress and disposal of the case. Hence I am of the opinion that the trail Court is justified in imposing; the penalty for absence of the accused.

7. The order sheet of the trail court further indicates that even thereafter the application filed by the Petitioner to recall FW1 has been allowed by the learned Magistrate on payment of cost on 23.09,2010. However again the Petitioner remained absent on 27.09.2010 and the appearance of the accused/Petitioner is exempted and the matter is posted to 28.09.2010 on which date again an application u/s 309 of Code of Criminal Procedure is filed by the Petitioner and the learned magistrate has also allowed the said application. On 29.09.2010 the Petitioner again remained absent and did not cross-examine the witnesses but filed application for adjournment, which came to be rejected.

8. The Petitioner with the above background has filed the transfer petition which has been rightly rejected by the learned Sessions Judge. The learned Sessions Judge has also initially stayed the further proceedings and on hearing, dismissed the petition.

9. Heard Sri. K.A. Chandrashekara, Advocate for Petitioner.

10. On a reconsideration of the entire material on record. I find that the transfer petition before the Sessions Court and before this Court is without any basis and the conduct of the Petitioner clearly proves that he has been purposely dragging the proceedings and is misusing the criminal procedure so as to protract the cheque-dishonor case and has been successful in getting four years time from the date of cheque. Even the proceedings after the rejection of the application for transfer by the Sessions Judge as evident from the certified copy of the order sheet of the trial Court produced by the Petitioner himself clearly establishes that he is bent upon misusing the procedure established by law to avoid a judgment against him. Use law is not certainly meant to protect such people. Needless to observe that he has made allegations against the Court without any justification legal or factual.

11. Hence that petition is rejected as having no grounds to support any of the contentions raised by the Petitioner.

12. The trial Court is directed to comply with the order of the learned Sessions Judge his so far as the disposal of the case is concerned, without further delay. If the Petitioner does not co-operate with the Court for the disposal of the case, the law provides for coercive measures including detention of the accused u/s 436(2) Code of Criminal Procedure in the interest of justice.