
Smt. U.Sudha D/o K.N.Upendra Vs Sri M.Prakash S/o Marigowda

5929 of 2016

Court: KARNATAKA HIGH COURT

Date of Decision: March 7, 2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 407](#) - Power of High Court to transfer cases and appeals#[Negotiable Instruments Act, 1881](#), [Section 138](#), [Sectio](#)

Hon'ble Judges: [John Michael Cunha](#)

Bench: [SINGLE BENCH](#)

Advocate: [Sri Nanjunda Swamy N, Sri A.G.Mulawad Math](#)

Judgement

[1. These five petitions are filed under section 407 of the Code of Criminal Procedure seeking to transfer the cases in C.C.No.1351/2015,](#)

[1353/2015, 1350/2015, 1354/2015 & 1352/2015 respectively pending on the file of the JMFC-II Court at Belagavi to the court of IV Additional](#)

[I Civil Judge at Mysuru.](#)

[2. The facts essential for the disposal of the petitions are that the respondent herein \(hereinafter called as ""complainant""\) initiated proceedings](#)

[against the petitioner \(hereinafter referred to as ""accused""\) under section 138 of Negotiable Instruments Act before the JMFC II Court at Belagavi](#)

[for dishonor of the cheques alleged to have been issued by the accused.](#)

[3. During the pendency of those proceedings, in view of the decision of the Hon'ble Supreme Court of India, all the above cases were transferred](#)

[to the Mysuru Court and have been numbered as C.C.No.3483/2014, 3484/2014, 3477/2014, 3502/2014 and 3476/2014 respectively.](#)

[4. During the pendency of these proceedings, certain amendments having been incorporated to the Negotiable Instruments Act, 1881 by the](#)

[Negotiable Instruments \(Amendment\) Act, 2015 the learned IV Additional I Civil Judge and JMFC Mysuru passed an order in all these matters](#)

directing return of the complaints to original jurisdiction as per the Negotiable Instruments (Amendment Ordinance) 2015. As a result, all these

proceedings are now ordered to be transferred to Belagavi Court.

5. There is no dispute that the cheques in question were drawn on Central Bank of India, Mysuru by the accused. The said cheques were

presented for encashment by the complainant before the drawee bank namely, State Bank of Mysore, Belagavi Branch. As a result, by operation

of the amended provisions of Section 142(2)(A) of the Negotiable Instruments Act, 1881 the proper Court for trial of these proceedings is JMFC

II Court Belagavi.

6. However, the accused has sought for transfer of these matters to the Mysuru Court under Section 407 of the Code of Criminal Procedure,

1973 on the ground of inconvenience faced by the accused in defending the said cases. According to the petitioner she is working as a

Stenographer in Central Sericultural Research and Training Institution, Central Silk Board, Mysuru, she cannot get frequent leave and even if she

can avail leave, she cannot afford to travel a distance of 400 KM from Mysuru to Belagavi. Further it is submitted by the petitioner that, her

husband has deserted her and she is residing in Bengaluru, with her school going daughter who is presently studying in 10th Standard in a High

School at Mysuru. There are no relatives of the petitioner residing in Belagavi, as such she cannot avail any accommodation in Belagavi and there is

no safety for her to travel to Belagavi to defend the cases.

7. Opposing the prayer, the learned counsel for the respondent submits that the situation of the complainant/respondent is no better. The

complainant/ respondent is a retired person who is aged more than 65 years and he cannot travel from Belagavi to Mysuru and further, the learned

counsel submits that by virtue of the amendment and the non-obstante Clause incorporated in Section 142(A) of the amended Act, the

proceedings in question are required to be tried only at Belagavi Court as the place of suing is determined by the Special Act, which overrides the

general provisions of Code of Criminal Procedure, 1973.

8. Having considered the rival contentions, I am of the view that in the fact situation of the case, the petitioner cannot be granted the relief of

transfer of these petitions on the purported ground of her inconvenience. No doubt, being a lady it may be difficult for her to travel to Belagavi to

defend the proceedings, but the said inconvenience is unavoidable for any litigant who is facing trial before the Court. Avocation of the parties also

cannot be a determinative factor in transferring the cases. Moreover, the accused need not appear before the Court on every date of hearing. The

Code of Criminal Procedure provides for exemption for appropriate reasons. In the instant case, the situation of the respondent is not better than

the petitioner. Being a retired person, merely because to satisfy the convenience of the petitioner, the respondent cannot be asked to travel the

distance especially when he is stated to be aged more than 65 years. Therefore, I am of the view that the reasons put forward by the petitioner do

not justify transfer of the matters to Mysuru.

9. More importantly, the place of suing in cases arising under the Negotiable Instruments Act is determined by the Legislature which has

specifically provided the forum for trial of the cases. The convenience of the parties must yield to the Legislative intendment. The non-obstante

clause also makes it evident that the place of forum fixed by the legislature should be the place of suing. For all these reasons I am not inclined to

allow the petitions.

Accordingly petitions are dismissed.

The Trial Court may consider favourably the applications if any moved by the petitioner/accused seeking her exemption from personal appearance.