

(2010) 11 MAD CK 0270**Madras High Court****Case No:** Criminal O.P. (MD) No. 12758 and N.P. (M.D.) No's. 1 and 2 of 2010

Mohamed Kasim

APPELLANT

Vs

Mohamed Kalifullah

RESPONDENT

Date of Decision: Nov. 2, 2010

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 379, 420, 466, 467

Citation: (2011) 1 Crimes 542

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G. Rajasuria, J.

This petition has been filed seeking for a direction to transfer the case in C.C No. 62 of 2009 on the file of the District Munsif-Cum-Judicial Magistrate, Yadapatti to Judicial Magistrate No. 1, Thanjavur so as to avoid the conflict of judgments.

2. Heard the Learned Counsel for the petitioner.

3. The nut-shell facts which are absolutely necessary and germane for the disposal of this petition, would run thus;

The respondent, Mohamed Kalifullah, lodged a complaint u/s 138 off the Negotiable Instruments Act and now it is pending before the learned District Munsif-cum-Judicial Magistrate, Yadapat the While so, the accused in that case, namely, Mohamed Kasim lodged a complaint with the police for the offences under Sections 467, 420, 379 and 466 of IPC and the police investigated into the crime and laid the police report before the learned judicial Magistrate No. 1, Thanjavur in C.C. No. 184 of 2010.

4. Learned Counsel for the petitioner would appropriately submit that both the cases should be tried by one and the same Magistrate: otherwise it is led to divergent judgments.

5.1 would recollect the following decisions:

(i) State of M.P. v. Mishrilal. 2003 SCC (Cri.) 1829

(ii) Surbir v. State of Madhya Pradesh 2001 CAL.LJ 1072

(iii) Nathilal and others v. State of U.P. and another. 1990 SCC (CrI) 638 An excerpt from it, would can thus:

We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned judge one after the other.

6. Since the complainant's case is pending before the learned District Munsif-Judicial Magistrate, Yadapatti, I hereby transfer the case in C.C. No. 184 of 2010 on the file of judicial Magistrate No. 1 Thanjavur to the learned judicial Magistrate, Yadapatti, to deal with these cases as per the aforesaid decisions.

7. With this direction, this petition is closed. Consequently, connected miscellaneous petitions are also closed.