

Samuel Thomas Vs. Unnikrishnan and ors.

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Court : Kerala

Decided On : Aug-04-1992

Reported in : 1993CriLJ149

Judge : M.M. Pareed Pillay, J.

Acts : Negotiable Instruments Act - Sections 138; Kerala High Court Rules - Rule 173; Code of Criminal Procedure (CrPC) , 1974 - Sections 407 and 407(5)

Appeal No. : Crl. M.C. 541 of 1992

Appellant : Samuel Thomas

Respondent : Unnikrishnan and ors.

Advocate for Def. : Dinesh Mathew,; J. Muricken,; K.V. Bhadra Kumari,;

Advocate for Pet/Ap. : Babu Thomas K., Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

M.M. Pareed Pillay, J.

1. This is an application under Section 407 of the Cr. P. C. to transfer C.C. 73 of 1992, C.C. 92 of 1992 of the Court of the Judicial Magistrate of the First Class,

Punalur, S.T. 215 of 1992 of the Court of the Judicial Magistrate of the First Class, Ranni, S.T. 2 of 1992 of the Court of the Judicial Magistrate of the First Class, Palakkad, S. T. 2824 of 1991 of the Court of the Judicial Magistrate of the First Class, Irinjalakuda, S.T. 247 of 1992. S.T. 279 of 1992, S.T. 296, C.C. 3 of 1992, C.C. 88 of 1992, S.T. 966 of 1992, S.T. 747 of 1992 of the Court of the Judicial Magistrate of the First Class, Chalakudy S.T. 144 of 1991, S.T. 206 of 1991, S.T. 209 of 1992, S.T. 926 of 1991 and S.T. 227 of 1992 of the Court of the Judicial Magistrate of the First Class, Trichur to the Additional Chief Judicial Magistrate's Court, Ernakulam. petitioner is an accused in all these. cases. Respondents-complainants filed the different cases before the Courts under Section 138 of the Negotiable Instruments Act. Case of the respondents in their respective cases is that the cheque issued by the petitioner was dishonoured on presentation and thus he committed the offence under Section 138 of the Negotiable Instruments Act.

2. Under Section 407 of the Cr. P. C. this Court can transfer cases and appeals pending before the subordinate Courts on the following grounds:

(a) where a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate to this Court; or

(b) where some question of law of unusual difficulty is likely to arise; or

(c) where an order under this section is required by any provision of this Code or whenever it appears that it is for the general convenience of the parties or witnesses or is expedient for the ends of justice.

3. Petitioner does not have a case that a fair and impartial inquiry or trial cannot be had in any of the Courts where cases are pending against him. Nor has he a case that some question of law of unusual difficulty is likely to arise in those cases. Then, the remaining question to be considered is as to whether the transfer sought by the petitioner is for the general convenience of the parties or the witnesses or is expedient for the ends of justice Learned advocates appearing for the respondents pointed out that each and every complaint relate to separate transaction and that there is nothing common among them to be decided by transferring all cases to one particular Court. As all the cases were instituted against the petitioner and

other accused persons and as they have arisen out of different transactions and as the documentary evidence or the oral evidence would not be common in all these cases, there is absolutely no justification in seeking the transfer.

4. If the cases are transferred from the different Courts to the Additional Chief Judicial Magistrate's Court, Ernakulam, it would definitely cause considerable difficulties to the complainants. As the private complaints are filed before the Courts the complainants will have to be present on every hearing date and that would mean that the respondents (complainants) would have to incur financial expenses and other difficulties. While considering general convenience of the parties Court cannot ignore the inconvenience caused to a party when a case is transferred from one Court to another. Merely because it would be convenient for the petitioner to have all the cases against him tried at one Court, it is not a ground to transfer the cases pending in different Courts where the respondents are the complainants as there is nothing common in all these cases except the fact that it was the petitioner who had issued cheques to them. Contention of the petitioner that issuance of the cheques by him to the respondents would form a single transaction is untenable. The real and substantial test for determining whether several offences are connected together so as to form one transaction depends upon whether they are so related to one another in point of purpose or cause and effect, or as principal and subsidiary acts as to constitute one continuous action.

5. The petition is also defective as it has not complied with the mandatory direction in Section 407(5) of the Cr.P.C. Section 407(5) provides that every accused person making an application for transfer shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made. It further states that no order shall be made by the Court on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application. The Code does not make any distinction between cases filed by private parties or at the instance of the State. Rule 173 of the High Court Rules also make it clear that for application for transfer notice has to be given to the State Prosecutor. In the petition State is not made a party and notice was not given to the State Prosecutor. This is a fundamental defect in the petition as it has violated Section 407(5) of the Cr.P.C. and also Rule

173 of the Kerala High Court Rules. On that ground itself the petition is to fail.

6. On merits also there is no case for the petitioner as he has not made out sufficient grounds to transfer the cases pending in different Courts to the Additional Chief Judicial Magistrate's Court, Ernakulam. The petition is without merit. Petition is dismissed.

7. After pronouncing the order counsel for the petitioner sought leave to appeal before the Supreme Court. It is not a fit case for appeal to the Supreme Court. Leave refused.

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