

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl) No(s).5805/2008

(From the judgement and order dated 30/06/2008 in
of The HIGH COURT OF KERALA AT ERNAKULAM)

TRP No. 41/2008

MUHAMMED ISSAHAK & ANR.

Petitioner(s)

VERSUS

K.K.ABDUL SALAM & ANR.

Respondent(s)

(With appln(s) for modification of Court's Order, ad-interim ex-parte
stay and office report)

Date: 20/11/2009

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s)

Mr. Sisir Pinaki, Adv.
Mr. P. Rajesh, Adv.
Mr. P.S.Sudheer, Adv.

For Respondent(s)

Mr. Santosh Paul, Adv.
Mr. John Mathew, Adv.

Mr. G. Prakash ,Adv

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in part in terms of the
signed order.

(Ganga Thakur)
PS to Registrar

(Ramesh Chander Joshi)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2256 OF 2009
(Arising out of SLP(Crl.) No. 5805/08)

MUHAMMED ISSAHAK & ANR.

...APPELLANT(S)

Versus

K.K. ABDUL SALAM & ANR.

.RESPONDENT (S)

O R D E R

Leave granted.

This appeal arises out of the judgment and order dated 30th June, 2008, passed by the High Court of Kerala at Ernakulam, in Tr.P(Crl.) No. 41 of 2008, purportedly, allowing the Transfer Petition and transferring C.C. No. 25/08, pending before the Judicial First Class Magistrate, Mannarkkad, to the court of Munsif Magistrate, Nadapuram, where S.T.No.1352/2006, re-numbered as S.T.No.120/2008, is pending.

The appellants herein are the accused in a complaint filed by the respondent No.1 under Section 138 of Negotiable Instruments Act, 1881. The same is pending before the Judicial First Class Magistrate, Mannarkkad, and has now been transferred to the court of Munsif Magistrate, Nadapuram, by the impugned judgment.

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The appellants herein are the defacto complainants in case, C.C. No. 25/08, under Section 420/34 IPC, pending before the Judicial First Class Magistrate Mannarkkad. The allegation in both the cases relate to a cheque which has allegedly been issued to the appellant by the 1st respondent, who is the complainant in the case pending in Nadapuram. In the said case, the trial has reached the stage of examination under Section 313 of Cr.P.C. whereas in the prosecution case under Section 420 IPC, cognizance has only been taken in 2008, and the matter was first posted for framing of charge on 12th May, 2008, and charges are yet to be framed.

The appellants herein filed the aforesaid

application for transfer on the ground that since the subject matter of the two cases was similar and the witnesses are also common, the case pending before the court of Munsif Magistrate, Nadapuram, should be transferred to be tried along with the case pending before the Judicial First Class Magistrate, Mannarkkad.

The prayer made on behalf of the appellant herein was opposed on behalf of the respondent No.1 herein, and after hearing the submissions made on behalf of the parties, the High Court thought it fit, in the interest of justice, to transfer the appellants' Complaint Case before the Judicial First Class Magistrate, Mannarkkad to the Court of Munsif Magistrate, Nadapuram.

Aggrieved by the said direction of the High Court, the appellants have filed the present appeal.

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Much the same submissions have been advanced before us as were advanced before the High Court. The only difference is that on behalf of the appellants, it has been submitted that on their petition for transfer of the case at Nadapuram to Mannarkkad, the High Court has exercised its jurisdiction erroneously in transferring his case from Mannarkkad to Nadapuram.

In our view, although, apparently the High Court wanted to do justice to the parties in having both the matters heard together, as it had also been prayed for by the appellants, it ought not to have, on the petition filed by the appellants, transferred the appellants' case to Nadapuram. At best, it could have dismissed the application. We are also unable to agree with the submissions made on behalf of the appellant that the case at Nadapuram should have been transferred to Mannarkkad. The case at Nadapuram has reached the final stage while the Complaint Case before the

Mannarkkad Court, is only at the stage where cognizance has been taken. The proceedings in the case at Nadapuram ought not to be held up on account of the pending proceedings at Mannarkkad.

In that view of the matter, we are not inclined to accept the reasoning of the High Court. We are of the view that at the best the High Court could have dismissed the application for transfer filed on behalf of the appellant.

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Accordingly, we allow the appeal in part and set aside the judgment of the High Court, but at the same time we dismiss the Transfer Petition filed on behalf of the appellant.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi,
November 20, 2009.