

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

TR.CRIMINAL PETITION No.177 OF 2015

Between:

Chinthalapati Venkat Reddy and 5 others

... Petitioners

and

The State of Andhra Pradesh rep. by its Public Prosecutor
and another

... Respondents

DATE OF JUDGEMENT PRONOUNCED: 31-07-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

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HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

TR.CRIMINAL PETITION No.177 of 2015

ORDER :

The petitioners are accused 1 to 6 in the Special Sessions Case No.26 of 2012 on the file of the Special Judge for Trial of SCs and STs Cases, Anantapuram. The 2nd respondent is the defacto-complainant, 1st respondent is the State represented by the Public Prosecutor. They sought for transfer of the Sessions Case from the file of learned Sessions Judge to any other Court in the State or the District as the case may be.

2) The contention of the learned counsel for the accused persons in the transfer application is that the learned trial Judge having originally framed the charges for the offences punishable under Section 147, 148, 326 I.P.C and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the application of the prosecution in Crl.M.P.No.27 of 2015 altered and framed additional charge for the offence punishable under Sections 307 read with 149 I.P.C pursuant to which P.Ws 1 to 6, 8 and 9 the witnesses already examined were recalled for further cross-examination by accused persons and they were cross-examined further at length in relation to the additional charge supra. It is later, after hearing, arguments of both sides, the matter reserved

for judgment and at the time of preparing the judgment as per the learned Special Judge, it is struck to his mind from material on record that the charge framed under Section 326 I.P.C modified to Section 326 read with 149 I.P.C and that thereby the earlier charge is altered under Section 216 Cr.P.C from Section 326 to Section 326 read with 149 I.P.C.

It is needless to say from the said charge altered, the accused persons filed an application for recall of P.Ws 1 to 5 out of 9 witnesses already examined and for the additional charge for the offence punishable under Section 307 read with 149 I.P.C, P.Ws 1 to 6, 8 and 9 already recalled and further cross-examined. The learned Judge dismissed the application for further recall of the witnesses stating from the additional charge under Section 307 read with 149 I.P.C framed they were given opportunity and further cross-examined at length the P.Ws 1 to 6, 8 and 9 and thereby there are no grounds for recall for mere modification from Section 326 I.P.C to Section 326 read with 149 I.P.C. Undisputedly impugning said order of the learned Special Judge, application filed before this Court (another bench) that is dismissed confirming the order of the lower Court in the factual matrix of the case.

3) It is while said revision was pending, the transfer application is filed. Even after the revision is dismissed supra, the petitioners want to continue the transfer application saying there is a pre-judging of the case by the learned Judge and it causes prejudice to their rights hence

to transfer. When already arguments heard and posted for judgment and while preparing judgment, the trial Court felt that as an abundant caution. It is in fact there are catena of expressions that vicarious liability like Section 149 or Section 120-B or Section 34 I.P.C not added when charge framed against any of the accused for the substantial section, conviction for main offence to be read with vicarious liability from the role if proved from evidence is sustainable. When such is the case, it cannot be called as pre-judging muchless to attribute prejudice therefrom. No doubt, the learned Single Judge of this Court in CrI.P.No.747 of 1978 dated 04.07.1978 at para No.12 end observed that though almost in similar facts where the charges framed for the offences under Sections 325 and 323 I.P.C and altered additionally under Section 325 read with 149 I.P.C, that by itself cannot be said that learned Judge had made up his mind to convict the accused when it appears to be reasonable that the case is to be decided by some other Judge and thereby transferred. There is no principle of law laid down in this case but in the circumstances of the case arrived the conclusion, to say confined to it. Otherwise also when the judgment is passing by the learned Judge having conducted the trial with no any little whisper of bias or prejudice or pre-judging the adding of Section 149 I.P.C with the substantial section 326 I.P.C cannot be called pre-judging and hence there are no grounds for transfer. In this regard law is very clear vide ***Madapuram Maddileti Naidu***

V. The State of Andhra Pradesh through Public Prosecutor (Tr.Crl.P.No.180, 186 and 187 of 2014).

4) Accordingly, the transfer criminal petition is dismissed. It is needless to say the learned Judge shall decide impartially the case on own merits. As a sequel, miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

31.07.2015
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