

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
Tr.CrI.P.No.121 of 2015

ORDER :

This petition is filed under Section 407 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner/defacto-complainant against the 13 respondents/accused persons for praying to withdraw S.C.No.5 of 2013 on the file of the Court of the learned Special Judge under SC and ST(POA) Act-cum-X Additional Sessions Judge, Krishna District at Machilipatnam and transfer the said case to any other Sessions Court in Krishna District.

2. Heard the learned counsel for the petitioner-defacto complainant so also the learned Public Prosecutor representing State-1st respondent before admission and perused the material on record.

3. The main grievance of the petitioner in seeking transfer is that, in S.C.No.5 of 2013 outcome of committal under Section 209 of Cr.P.C. taken cognizance under Section 193 of Cr.P.C. by the Court of Sessions by allotting S.C.No.5 of 2013, and the learned Sessions Judge of the Sessions Division allotted the case for trial for the offences punishable under Sections 302,341 and 120-B read with 34 of I.P.C. (Cr.No.29 of 2012) the X Additional Sessions Judge of Krishna District who has taken up the trial after framing charges. It was while the trial was in progress as the officer went on training, the Sessions Judge in administrative side made over the case to the I Additional Sessions Judge, Machilipatnam who has taken up the further trial.

4.It is the grievance that subsequent to the resuming of charge after training by the X Additional Sessions Judge, the case proceedings transferred by this Court at the admission stage of transfer petition and before notice to the defacto-complainant who is the petitioner herein to the X Additional Sessions Judge, Machilipatnam. The grievance of the petitioner is without hearing that order was passed. No material placed regarding the order to say even without notice. Even the petitioner

otherwise cannot ask the case to be tried by a particular Court.

5. The only grievance for that is, the prosecution is not being conducted properly by the learned Public Prosecutor and the defacto-complainant therefrom filed W.P.No.41244 of 2014 and the same is pending in this Court to change the present Public Prosecutor conducting the case before the learned X Additional Sessions Judge and the other grievance is that the learned Judge issued non-bailable warrants(N.B.Ws.) instead of bailable warrants (B.Ws.) to L.Ws.9 to 12 and even their application to recall not disposed of.

6. It is needless to say, the learned Judge has to recall the N.B.Ws on petition of the witnesses and from their presence to give evidence. The other grievance regarding prosecution is not properly conducting. Proviso to **Section 24(8)** has been when inserted by the **Code of Criminal Procedure** (Amendment) Act, 2008 (5 of 2009) with effect from 31.12.2009 which permits a victim to seek permission of the Court to engage an advocate of his/her choice to assist the prosecution. Needless to say by virtue of amended provision, it is not mere assisting the Public Prosecutor under Section 301 of Cr.P.C. but further right conferred on the victim to engage an advocate of her choice to assist the prosecution to see the prosecution is being run within the scope of Section 24(8) proviso as considered by this Court in CrI.P.M.P.No.4382 of 2014 in CrI.P.No.4546 of 2014 and in CrI.P.M.P.No.4383 of 2014 in CrI.P.No.4547 of 2014 dated 17.07.2014 about the right of the victim. Needless to say the mother of the deceased is L.W.10 who is the victim within the definition of Section 2(wa) of the amended Cr.P.C. supra.

7. Having regard to the above, the Criminal Petition is disposed of for no grounds to transfer the case vide S.C.No.5 of 2013 from the Court of the learned Special Judge under SC and ST(POA) Act-cum-X Additional Sessions Judge, Krishna District at Machilipatnam to any other Sessions Court; by giving liberty to the L.W.10 to file an application before the trial Court under Proviso to Section 24(8) Cr.P.C. to permit to conduct

prosecution by engaging a private advocate of her choice and therefrom to recall any witnesses as contemplated by Section 311 Cr.P.C. read with 165 of the Indian Evidence Act or for examination of the further witnesses. Consequently, miscellaneous applications, if any, pending in this Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 23.06.2015
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