

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

TRANSFER CRIMINAL PETITION No.274 OF 2014

ORDER:

This is a Transfer Criminal Petition filed under Section 407 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') by the petitioners/A.1 and A.2 to direct the transfer of case in C.C. No.445 of 2011 on the file of II Additional Judicial First Class Magistrate, Tenali to the Special Court-cum-IV Additional Sessions Judge Court, Guntur by setting aside the order passed in Tr.Crl.M.P. No.1402 of 2014 dated 23.09.2014.

2. The petitioners 1 and 2 are A.1 and A.2 in Crime No.147 of 2011 of Tenali Rural Police Station, registered for the offences punishable under Section 3(i)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the police after investigation filed charge sheet that was taken cognizance by the learned Magistrate under Section 190 Cr.P.C. and committed to the Court of Sessions under Section 209 Cr.P.C, pursuant to which the learned Sessions Judge taken the case on file and allotted number viz., S.C. No.63 of 2013, which is pending on the file of Special Judge for trial of cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-IV Additional District Judge, Guntur. It is alleged that the occurrence took place on 15.06.2011 as it appears. It is the case of the petitioners that they received injuries in the hands of the opposite parties, at whose instance Crime No.147 of 2011 was registered, covered by S.C. No.63 of 2013, and on the report dated 07.07.2011 from the order of the Hon'ble Magistrate in Dis.No.792 dated 08.07.2011 Crime No.149 of 2011 was registered against the *de facto* complainant of S.C. No.63/2013 in Crime No.147/2011 by

the self-same Tenali Rural Police Station, for the offences punishable under Sections 323 and 506 read with Section 34 IPC, and the police after investigation filed charge sheet that was taken cognizance by the learned magistrate under Section 190 Cr.P.C. and allotted case number viz., C.C.No.445 of 2011.

3. The factum of the two cases pending is not in dispute, but for to say in opposing the transfer petition by the respondents 1 and 2, the *de facto* complainant of Crime No.147 of 2011 [S.C.No.63 of 2013] though the alleged incidents even claimed to have taken place on same day within a short gap of time, but the time and place of occurrence are different. In fact, a close perusal of the record shows one case is occurred contemporaneous to the other, to say one followed by the other or one at one place and the other at another place of counter attack. In such case, as per the settled principles, though the respondents are opposing for the transfer petition, just to try by the same judge simultaneously both cases to pronounce the judgments at one day after common hearing of arguments to avoid conflict of judgments. The principle of law is well settled in this regard by several expressions of the constitutional Courts including of the Apex Court holding that if one case is contemporaneous or counter to the other, rather to be tried by separate Courts the ends of justice requires to try by same Court.

4. The principle laid down in **Bandaru Sreedhar Reddy v. State of Andhra Pradesh**^[1] almost applies to the facts where also two crimes registered for the occurrences, one serves as counter to the other case and one pending as calendar case and the other as Sessions Case. In ordering the calendar case to be transferred to try along with the Sessions Case simultaneously to

sub-serve the ends of justice by negating arguments of transfer of the calendar case takes away one right of the accused of appeal before Court of Sessions not tenable.

5. In the instant case, the C.C. is pending, no doubt, on the file of II Additional Judicial First Class Magistrate, Tenali, Guntur District, and the Sessions Case is pending on the file of Special Judge for trial of cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-IV Additional District Judge, Guntur. To say both are in the same District and thereby C.C.No.445 of 2011 is required to be transferred to the Court of Special Judge for trial of cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-IV Additional Sessions Judge, Guntur, to try simultaneously with S.C.No.63 of 2013 and to hear the arguments in both cases and pronounce judgments on the same day in both cases simultaneously.

6. Accordingly, the Transfer Criminal Petition is allowed with the above directions.

7. Miscellaneous petitions pending, if any, in the Transfer Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 21.07.2015

MVA

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