

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

-

TRANSFER CRIMINAL PETITION NO. 96 OF 2015

ORDER:

This application is filed under Section 407 Cr.P.C, seeking transfer of S.C.No. 10 of 2012 from the Principal Assistant Sessions Judge, Srikakulam to any other Court in the same district.

2. Petitioner alleges that she is the complainant in the said case and when she was deposing, the Principal Assistant Sessions Judge “unwantonly cautioned her to state the facts in brief” and so she could not depose the real facts. It is further contended that the petitioner had filed CrI.M.P.No. 136 of 2013 under Section 319 of Cr.P.C to add four other persons as A2 to A5 and after the enquiry, the said petition was dismissed by that court and the matter was posted for cross-examination of petitioner on 3.9.2014; in these circumstances, the petitioner had lost her hope and confidence in the said court and feels that prejudice may be caused to her and so the matter is required to be transferred to another court.

3. Counter affidavit was filed to this application by first respondent contending that this application had been filed by the petitioner by inventing grounds that it was not maintainable and the same may be dismissed.

4. By order dated 6.11.2014 the Principal District and Sessions Judge, Srikakulam dismissed the said Criminal Miscellaneous Petition. He held that if the application under Section 311 Cr.P.C was dismissed by the Principal Assistant Sessions Judge, Srikakulam, the petitioner can challenge this order in revision if she is really aggrieved by the said order. Without doing so, she cannot file this application making allegations against the Presiding Officer. He also held that the petitioner can file a recall petition under Section 311 Cr.P.C., for her further chief examination for deposing further relevant facts and if she files it, the Principal Assistant Sessions Judge, Srikakulam may permit her to state

the real and relevant facts in respect of the occurrence alleged to have been taken place in this case.

5. Challenging the same, this application under Section 482 Cr.P.C has been filed.

6. Counsel for the petitioner would contend that continuance of trial before the said court is not warranted because of the act of the Principal Assistant Sessions Judge, Srikakulam in restraining the petitioner to speak freely about the incident in question and also because of the dismissal of Section 319 Cr.P.C petition filed by the petitioner.

7. I am of the opinion that if the petitioner is aggrieved by the order passed under Section 319 Cr.P.C, the petitioner ought to have challenged the order by way of Revision or Appeal and she is not entitled to cast aspersions on the Principal Assistant Sessions Judge, Srikakulam, before whom her case S.C.No. 10 of 2012 is pending. As rightly observed by the Principal District and Sessions Judge, it is open to the petitioner to file a recall petition under Section 311 Cr.P.C for her further chief examination for deposing further relevant facts and if such an application is filed, the Principal Assistant Sessions Judge, Srikakulam may permit her to state real and relevant facts in respect of the occurrence alleged to have taken place.

8. I see no merit in the Transfer Criminal Petition and accordingly, the same is dismissed.

9. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21.04.2015

KA