

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.288 OF 2016

ORDER:

This transfer criminal petition, under Section 407 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to withdraw S.C.No.122 of 2012 pending on the file of Assistant Sessions Judge, Bobbili, Vizianagaram District, and transfer the same to any other competent Court in Vizianagaram District, on the apprehension that the petitioner would not get fair justice if it is tried by the learned Assistant Sessions Judge, as she made certain observations while passing an order dated 02.05.2016 in CrI.M.P. No.28 of 2016 in S.C.No.122 of 2012.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition, while drawing the attention of this court to a specific allegation made at paragraph 9 in the petition regarding the apprehension of the petitioner, which remain unrebutted by the respondent by filing counter.

Sri K. Sitaram, learned counsel appearing for the first respondent, contended that if this petition is ordered it will effect the morale of the officer and such power cannot be exercised based on baseless allegations.

No doubt, the officer made certain observations while passing the orders under challenge, which are inconsistent with one another, but they do not form a ground to withdraw and transfer the matter while exercising power under Section 407 of Cr.P.C. since the officer is a human being and bound to commit error. But merely because the officer committed an error, it

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would not create such apprehension, much less strong apprehension, that the petitioner would not get fair justice. Sometimes officers are required to pass incidental proceedings advertent to the merits of the case. However, an order passed by the learned Assistant Sessions Judge, in CrI.M.P. No.28 of 2016 filed under Section 311 of Cr.P.C., is not based on facts, since the documents were not filed along with the petition, which they are sought to be marked. Perhaps this may be an error, and the order was under challenge in revision and the same is pending before this Court as disclosed by the counsel for the petitioner.

During hearing, Sri K.Sitaram, learned counsel for the first respondent, while strongly supporting the order under challenge, fairly conceded that he has no objection to transfer the matter to any other Court at Vizianagaram without making any adverse remarks against Officer.

In view of the concession of the counsel for the petitioner, without advertent to the facts and deciding the merits in the petition, I deem it appropriate to withdraw S.C. No.122 of 2012 pending on the file of Assistant Sessions Judge, Bobbili, and transfer the same to the Court of Principal Assistant Sessions Judge, at Vizianagaram.

Accordingly, the transfer criminal petition is allowed.

Miscellaneous petitions, if any, pending in this transfer criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 19.12.2016
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