

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CRIMINAL REVISION CASE No.1756 of 2012**

**ORDER:**

This criminal revision case is filed by the petitioner under Section 397 and 401 Cr.P.C. challenging the order dated 28.12.2011 in Transfer CrI.M.P.No.548 of 2011 on the file of the Court of Sessions Judge, Krishna at Machilipatnam.

The contention of the learned counsel for the petitioners is two fold:

1. The finding of the Court below that C.C.No.1154 of 2010 and S.C.No.348 of 2009 arose out of the same transaction is factually incorrect; and
2. The Court below passed the orders on assumptions and presumptions, therefore, the same is liable to be dismissed.

Per contra, the learned Public Prosecutor submitted that the Court below rightly considered the material available on record and allowed the petition.

A perusal of the record reveals that some untoward incident took place on 13.05.2007 at about 8.30 p.m. at Kothagudem village, Mylavaram Mandal of Krishna District. Basing on the complaint lodged by Dongala Koteswara Rao (the first respondent herein) and others, the Station House Officer, Mylavaram registered a case in Crime No.82 of 2007 for the offences punishable under Sections 307, 324 read with 34 IPC. Basing on the complaint lodged by Ulliboyina Yesubabu (petitioner herein) the Station House Officer, Mylavaram registered a case in Crime No.83 of 2007 for the offences punishable under Sections 326, 324

read with 34 IPC against respondents 2 to 10 herein. After completion of the investigation, the Station House Officer, Mylavaram laid charge sheet against the petitioners No.1 to 9 herein under Sections 326, 324 read with 34 IPC. The learned I Metropolitan Magistrate, Vijayawada after satisfying himself with the material placed before him has taken cognizance of offences under Sections 326, 324 read with 34 IPC against the petitioners herein and numbered the same as C.C.No.1154 of 2010. After completion of investigation, the Investigating Officer laid charge sheet against Dongala Koteswara Rao and others for the offences punishable under Sections 307, 324 read with 34 IPC. The District and Sessions division has taken the case on file and numbered it as S.C.No.358 of 2009 and made over the same to II Additional Assistant Sessions Judge, Vijayawada for disposal in accordance with law.

A perusal of the record reveals that on 13.05.2007 both parties attacked with each other. Both parties received injuries. If both the cases are tried by different courts, it may leads to conflicting of judgments. In order to decide who are the aggressors both cases shall be tried by the same Court. It is a settled principle of law that trial shall be conducted by the same Court in case and counter case. In order to resolve the issue, this Court is placing reliance on the decision in “**THOTA RAMAKRISHNAYYA AND OTHERS v. THE STATE**”<sup>[1]</sup>, wherein it was held at paras 23, 24 and 25 as follows:

23. The trial of this case is in violation of the injunction of this High Court and other High Courts in a series of decisions and the principle of which is as follows. Where there is a fight between two rival factions which gives rise to the complaint and counter-complaint it is a generally recognised rule that both the cases

should be tried by the same Judge in quick succession though with different Assessors and Jurors; the first case should be tried to a conclusion and the verdict of the Jury or the opinion of the Assessors be taken. The Judge should, however, postpone the judgment in that case till he has heard the second case to a conclusion and he should then pronounce judgments separately in each case. He is bound to confine his judgment in each case to the evidence let in that particular case and is not at liberty to use the evidence in one case for the purpose of the judgment in the other case and to allow his findings in one case to be influenced in any manner to the prejudice of the accused by the views which he may have formed in the other case.

24. This settled practice enunciated above was laid down by this High Court and has been adopted by other High Courts and can now legitimately be described as an universal practice in India. I shall now briefly indicate the case-law on the subject.

25. The earliest decision of the Madras High Court is the Bench decision of Waller and Cornish JJ. In -- 'Goriparthi Krishtamma, in re', 1929-2 Mad Cr. C. 238 (Z1). It was held therein that where there was a fight between two parties and the Police charge-sheeted both and the offences against one party were triable by the Magistrate while those against the other were triable by the Sessions, that both cases should have been committed for trial by the Sessions Court on the foot of the following reasoning:

"A case and a counter case arising out of the same affair should always, if practicable be tried by the same Court. Each party represent themselves as having been the innocent victim of the aggression of the other. Neither will, as prosecution witnesses admit that they retaliated on the other, for the obvious reason that they are themselves on trial in the other case. As accused, they do not, as a rule let in any defence evidence, relying on the evidence they have given in the other case as prosecution witnesses. The result is that no court can grasp the real facts unless it tries both cases."

[In -- 'Krishna Pannadi v. Emperor'](#), AIR 1930 Mad 190 (Z2), Jackson, J. observed: "There is no clear law as regards the procedure in counter-cases, a defect which the Legislature ought to remedy.

It is a generally recognised rule that such cases should be tried in quick succession by the same Judge, who should not pronounce till the hearing of both cases is finished.

This precludes the danger of an accused being convicted before his whole case is before the Court, and also prevents there being conflicting judgments upon similar facts. But at the same time the rule involves obvious difficulty. It seems to infringe the fundamental principle that the Court must not import any facts into a case which are not to be found on the record. To take an illustration; suppose in the first of the cases, the accused succeeds in showing that the prosecution has failed to prove its charge, and then in the second case, the same accused as complainant goes into the witness-box and breaks down in the cross-examination so as to convince the court that the truth lies with the other side. Can the Court be expected to dismiss this circumstance from its mind, and if it does not do so, what legal justification is there for importing it into the case already heard?

The only way in which such a procedure can be justified is by setting up a fiction that the case and a counter-case are really one, and this fiction should be made a reality by statute. If a court were empowered to link cases, as they link files in a Secretariat, there would also be the incidental advantage of a great saving of time. At present in each case the evidence of every witness must be fully recorded and what P.W. 1 says for the prosecution in one case must all be written out again when he repeats it as D. W. in the other case.

But whether there be a statutory enactment or not, the point remains that for practical purposes a case and its counter are one, and it is this that makes these general observations particularly germane to the present case."

Having regard to the facts and circumstances of the case and also the principal enunciated in the cases cited supra, I am of the considered view that the Court below has not committed any illegality or irregularity while allowing Tr.Crl.M.P.No.548 of 2011. There are no grounds much less valid grounds to interfere with the well considered order of the Court below. Viewed from any angle, the criminal revision petition is not maintainable.

Learned counsel for the petitioners requested that the presence of the petitioners may be dispensed with before the trial

Court on each and every date of adjournment. It seems that the petitioners are agriculturists by profession. The petitioners may face much difficulty to attend the Court on each and every date of adjournment. Hence, this Court is inclined to dispense with the presence of the petitioners 2 to 9, who are accused Nos.2 to 9 in C.C.No.1154 of 2010 on each and every date of adjournment. However, the petitioners 2 to 9 shall appear before the trial Court as and when their presence is so required.

Accordingly, Criminal Revision Case is dismissed at the stage of admission. As a sequel, the miscellaneous petitions, pending if any in this revision, shall stand closed.

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**T.SUNIL CHOWDARY, J.**

**June 29, 2016**

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[\[1\]](#) AIR 1954 MADRAS 442