

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.26310 of 2008

Between:

David Philomina

....Petitioner

and

The Station House Officer,
Law and Order,
Governorpet Police Station, Vijayawada,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 22.02.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.26310 of 2008

ORDER:

The petitioner is accused No.3 in S.C.No.197 of 2008 on the file of the learned VII Additional District and Sessions Judge (Fast Track Court), Vijayawada, which is being filed for the offence under Section 420 IPC read with Section 489 IPC. The said case emanated from the complaint filed by one Chandramouli on the ground that he was cheated by one Satish and Durga Prasad on 21.03.2005. The petitioner submits that the offence under Section 420 IPC is triable by the Court of the First

Class Magistrate, whereas the offence under Section 489 IPC is triable by the Court of Sessions. The petitioner was shown as accused No.3 on the ground that she possessed two fake hundred notes. The possession of such fake currency has nothing to do with the alleged offence committed by accused Nos.1 and 2. However, the fake currency was recovered from the first accused. When summons were issued to the petitioner to appear before the Sessions Court on 26.11.2008, this Writ Petition was filed.

A counter affidavit was filed stating that one V.Chandramouli lodged a complaint in Governorpet Police Station on 21.03.2005 based on which Crime No.53 of 2005 was registered under Section 420 IPC and investigation was taken up. The petitioner was shown as accused No.3 in the FIR. The gist of the complaint was that the petitioner along with other accused colluded with common intention to earn money easily by illegal means and cheated the complainant by promising to give gold on cheaper rates. It was further stated that they substituted the money with bundles containing newspaper without his notice and thus he was cheated by the petitioner along with two others. The Investigating Officer arrested accused Nos.1 to 3 on 22.03.2005 at 9:30 pm at Sindhuri Lodge, room No.2092, Hanumanpet, Vijayawada, in the presence of the mediators and they were sent to judicial custody. Accused No.1 was taken into Police custody from judicial custody and he confessed before the Police in the presence of mediators on 27.03.2005 admitting his guilt. The charge sheet was filed before the Court of learned III Additional Chief Metropolitan Magistrate, Vijayawada, and later on it was committed to the Sessions Court vide S.C.No.197 of 2008 on the file of the learned VII Additional District and Sessions Judge (Fast Track Court), Vijayawada. It was stated that the entire transaction of cheating which followed recovery of fake currency was a single transaction and all the accused including the petitioner participated in the said transaction. The said counter affidavit was supplemented by written instructions submitted to the learned Government Pleader, which

discloses that, with regard to accused No.1, the learned VIII Additional District and Sessions Judge (Fast Track Court), Vijayawada, is separately conducting the trial vide S.C.No.74 of 2010 and the case is posted to 29.02.2016.

Learned Counsel for the petitioner submits that the allegation against accused No.3 – the petitioner herein, is with regard to her involvement in fake currency transaction is nothing to do with the offence under Section 489 IPC in which accused Nos.1 and 2 can be tried. But, the charge sheet discloses that accused No.3 – the petitioner herein, was involved in the same transaction and her participation in the money transaction is linked to the offence indulged by accused Nos.1 and 2.

Learned Counsel for the petitioner relied on a decision in **The Public Prosecutor v. T.D.Khajavalli**^[1], which says that the issue of committal arises under Section 209 Cr.P.C not immediately after the Magistrate takes cognizance of an offence exclusively triable by a Court of Session, but after the appearance of the accused before him and the Magistrate complied with the mandate in Section 207 Cr.P.C. Hence, the said case deals with the powers of the Magistrate while committing a case to the Sessions Court. The other decision relied on by him in **State of Assam v. Hit Ram Deka**^[2] rendered by the Gauhati High Court says that even if it appears that distinct offences have been committed in the course of the same transaction, some triable by the Magistrate and some exclusively triable by the Court of Session, the case involving all the offences shall have to be committed to the Court of Session for trial. Similarly, the decisions relied on by him in **Sanjay Gandhi v. Union of India**^[3] and **Mahesh Singh v. S.I.Jagdish Singh**^[4] do not help the case of the petitioner.

The present Writ Petition was filed after receipt of summons from

the Court of Sessions, which clearly shows that the present Writ Petition was filed after committal of the case to the Court of Sessions. The petitioner has not availed any opportunity given by the learned committal Magistrate. This Court cannot decide whether the involvement of the petitioner in the offence is in relation to the same transaction, and it is left to the petitioner to take appropriate steps in accordance with law in the pending case in S.C.No.197 of 2008 on the file of the learned VII Additional District and Sessions Judge (Fast Track Court), Vijayawada, if she is so advised.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

22.02.2016

VS

[\[1\]](#) 1980 (2) ALT 138

[\[2\]](#) 1990 Cr.L.J 6

[\[3\]](#) AIR 1978 SC 514

[\[4\]](#) 1978 Cr.L.J. 1422