

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

TRANSFER CRIMINAL PETITION No.138 OF 2011

ORDER:

The present Transfer Criminal Petition, under Section 407 of Cr.P.C., is filed by the petitioners/A.2 to A.4 and A.6 to A.8 in C.C.No.147 of 2010, challenging the orders dated 08.11.2010 and 13.01.2011 passed in Tr.Crl.P.Nos.1229 and 1669 of 2010, respectively, including that of the proceedings in C.C.No.147 of 2010 pending on the file of VII Additional Sessions Judge (FTC), Guntur District.

2. It is pertinent to mention here that, while admitting the transfer criminal petition, vide order dated 10.06.2011, in Tr.Crl.P.MP.No.168 of 2011 in Tr.Crl.P.No.138 of 2011, this Court granted interim stay until further orders. Since then, the trial has not proceeded further. Thereafter, respondent Nos.2 and 3 – defacto-complainants moved Tr.Crl.P.MP.No.12 of 2013, seeking vacation of the said interim order, but the same was dismissed, by order dated 08.11.2016. That is the reason why, the Transfer Criminal Petition is listed for hearing.

3. The Transfer Criminal Petition is filed on the ground that the transfer of Calendar Case in C.C.No.147 of 2010 pending on the file of Additional Junior Civil Judge's Court, Mangalagiri, to the Court of II Additional Sessions Judge, Guntur, at the first instance, and later to the Court of VII Additional Sessions Judge (FTC), Guntur, is not only

incorrect, unjust and perverse, but also inconsistent with the material on record. The District and Sessions Judge, Guntur, did not apply his mind to the facts of the case and passed the impugned orders in a mechanical manner. The orders under consideration are neither expedient for the ends of justice nor based on the material on record.

4. Learned counsel for the petitioners submits that it was brought to the notice of the learned District and Sessions Judge, Guntur, in the counter filed in Tr.Crl.P.No.1229 of 2010 that S.C.No.421 of 2010 was made over to the Court of VII Additional Sessions Judge (FTC), Guntur, whereas C.C.No.147 of 2010 pending on the file of Additional Judicial Magistrate of First Class, Mangalagiri, was transferred to the Court to II Additional Sessions Judge, Guntur. Later, the learned District and Sessions Judge, Guntur, again transferred the said case to the Court of VII Additional Sessions Judge (FTC), Guntur, for disposal, though it was not prayed for by the petitioners therein. Thus, the impugned orders dated 08.11.2010 and 13.01.2011 passed in Tr.Crl.P.Nos.1229 and 1669 of 2010, respectively, by the District and Sessions Judge, Guntur, caused prejudice to the petitioners and others for no fault on their part, and hence, liable to be set aside.

5. Learned counsel for the petitioners would further submit that the Crime No.271 of 2008, registered for the offences punishable under Sections 498-A, 492, 201 and 420 of IPC, r/w. 34 IPC, was to be tried by the Additional Junior Civil Judge, Mangalagiri, whereas

Crime No.268 of 2008 registered for the offences punishable under Sections 302 and 201 of IPC was to be tried by the Court of Sessions. However, the learned District and Sessions Judge, Guntur, has clubbed both the matters together, thereby the petitioners would lose their right of appeal.

6. The fact remains that the deceased died on 10.08.2008 and thereafter basing on the complaint dated 14.11.2008 made by the father of the deceased, a case in Crime No.268 of 2008 of Mangalagiri Town Police Station, for the offences under Sections 302 and 201 IPC, was registered against the petitioners. Subsequently, basing on the complaint dated 16.11.2008 made by the mother of the deceased, another case in Crime No.271 of 2008 on the file of the very same Police Station was registered for the offences punishable under Sections 498-A, 494, 201, 420 of IPC, r/w. 34 of IPC.

7. Respondent Nos.2 and 3 filed Tr.Crl.MP.No.1229 of 2010 seeking to withdraw C.C.No.147 of 2010 pending on the file of Additional Judicial Magistrate of First Class, Mangalagiri, and transfer the same to the Court of II Additional Sessions Judge, Guntur, to be tried along with S.C.No.421 of 2010, and the same was allowed vide order dated 08.11.2010.

8. A perusal of the said order shows that the mother and father of the deceased filed Tr.Crl.MP.No.1229 of 2010 seeking to withdraw C.C.No.147 of 2010 pending on the file of Additional Judicial

Magistrate of First Class, Mangalagiri, and transfer the same to the Court of II Additional Sessions Judge, Guntur, to be tried along with S.C.No.421 of 2010.

9. The point for consideration before the Court below was as under:

“Whether C.C.No.147/2010 pending on the file of Additional Judicial Magistrate of I Class, Mangalagiri be withdrawn and transferred to the file of II Additional Sessions Judge, Guntur, to try along with S.C.No.421/2010 pending on its file?”

10. The petitioners herein filed counter affidavit, wherein it was contended that the incidents covered by both the cases are different and distinct and question of conflicting decisions would not arise, in the event of trial of the cases by two different Courts. It is further contended that the 10th respondent therein is a native of Kanumolu, near Hanuman Junction and he is a patient suffering from old age ailments, like hypertension, heart ailments, etc., and it is difficult for him to attend the Court at Guntur, undertaking journey for long distance and that too, he is apprehending danger in the hands of the brother of the deceased, who is a rowdy sheeter in Guntur.

11. In C.C.No.147 of 2010, there are nine (9) accused, including the petitioners herein and the date of incident was on 09.08.2008 in the mid-night and the place of occurrence is the house of A.1 and A.2, whereas the offences covered by S.C.No.421 of 2010 are punishable under Sections 302 and 201 IPC and the date, time and place of

offence are one and the same as that of the time and date of offences in C.C.No.147 of 2010, and the victim is also the same.

12. As per the charge sheet filed in C.C.No.147 of 2010 and S.C.No.421 of 2010, the time, date and place of occurrence are one and the same and the victim is also one and the same. Thus, these two cases are arising out of a single incident. However, the police, for the reasons best known to them, registered two cases in Crime No.271 of 2008, registered for the offences punishable under Sections 498-A, 492, 201 and 420 of IPC, r/w. 34 IPC; and Crime No.268 of 2008 for the offences punishable under Sections 302 and 201 IPC, and filed two different charge sheets for different offences against the same incident, list of witnesses are almost over and evidence is to be adduced in both the cases and, therefore, there is every likelihood of conflicting decisions, in case both the matters are tried and disposed of by two different Courts and in order to avoid conflicting decisions and to save the precious time of the Court below and also the expenditure of the party, the Court below opined it fit to withdraw C.C.No.147 of 2010 from the file of Additional Judicial Magistrate of I Class, Mangalagiri, and transfer the same to the Court of II Additional Sessions Judge, Guntur, where S.C.No.421 of 2010 is pending, to try both the cases, either jointly or simultaneously, since both the cases are arising out of the same incident.

13. Keeping in view the above facts and circumstances, I do not find any illegality or error in the order dated 08.11.2010 passed by the

learned Sessions Judge, Guntur, and hence, the present petition has no merit and the same is liable to be dismissed.

14. Accordingly, this Transfer Criminal Petition is dismissed. However, since both the cases are very old, the trial Court is directed to dispose of these cases, expeditiously, by giving priority over and above the cases to be tried, which were registered subsequent to the present cases.

JUSTICE SURESH KUMAR KAIT

22.11.2016.
Msr



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Msr