

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

TRANSFER CRIMINAL PETITION No.5 of 2015

ORDER:

The petitioner is the de-facto complainant, victim in C.C.No.174 of 2013 on the file of II Additional Munsif Magistrate, Ongole of Andhra Pradesh. Respondent Nos.1 to 3, are husband, brother-in-law and mother-in-law of the de-facto complainant. The 4th respondent is the State represented by the Public Prosecutor.

The transfer of the Calendar Case from the file of learned Magistrate sought by the petitioner in this application is on the ground that she is now residing at Hyderabad and she filed M.C.No.88/2010, which is pending on the file of Judge, Family Court Nampally, Hyderabad within the State of Telangana. The other allegation is oral, without any basis much less of any complaint by her in this regard, of she is receiving threatening calls from the accused persons and thereby, it is not safe for her to come and depose and same threat may enure against the witnesses also and thereby the case is to be transferred.

A perusal of C.C.No.174 of 2013, list of prosecution witness Nos.1 to 16 shows, but for few, all others are from Ongole or Kadapa or around. It is the submission by the learned counsel for respondent Nos.1 to 3 so also from the Public Prosecutor representing the State, 4th respondent, that the evidence of the de-facto complainant-LW.1 was closed for her non-appearance and most of other prosecution witnesses were examined and she filed an application for her examination of setting aside the closing order by seeking re-call under Section 311 Cr.P.C and it is pending. Though it is the submission of the counsel for the respondents that the petition also dismissed on merits, same is denied by her and her counsel in saying same is still pending. Leave it as it is, this Court by invoking inherent power under Section 482 Cr.P.C., directs the lower Court to permit her and her

brother or other family member for whose recall or reopen the closed evidence petition was filed whether same is pending or dismissed by virtue of this order and to record evidence to sub serve the ends of justice. But for that there are no merits in the transfer petition to allow. It is made clear, if at all she wants any advocate to be engaged to assist the prosecution as contemplated either under Section 302 or 24 clause (8) proviso of Cr.P.C., can obtain leave of trial Court by virtue of this order and proceed with the matter before the learned Magistrate Court. It is needless to say whenever security is required for any apprehension she can apply to the Superintendent of Police, Ongole of Prakasam Distirt, to provide at her expenses any police assistance for her attending the Court and giving evidence in the Calendar Case.

Subject to the above observation, this Transfer Criminal Petition is dismissed.

Consequently, miscellaneous petitions, if any shall stand dismissed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 24.06.2016
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