

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.319 of 2016

ORDER:

This Criminal Petition, under Section 407 Cr.P.C., is filed to set aside the order, in Tr.Crl.MP.No.1067 of 2016 dated 08.08.2016, passed by the learned Metropolitan Sessions Judge, Hyderabad, and re-transfer C.C.No.122 of 2013 to VIII Chief Metropolitan Magistrate, Nampally, Hyderabad.

The main ground urged before this Court is that, while C.C.No.122 of 2013 filed for the offences punishable under Sections 452, 324, 323 IPC read with 34 IPC, the punishment prescribed for the offence punishable under Section 452 IPC is for a term, which may extend to seven years and shall also be liable to fine, but, whereas the IX Special Magistrate, Hyderabad, has no jurisdiction to try the offence punishable under Section 452 IPC though competent to try the offences punishable under Sections 324 and 327 IPC, therefore, due to lack of power to impose punishment of more than three years, the Magistrate is incompetent and requested to withdraw C.C.No.122 of 2013 pending on the file of IX Special Magistrate, Hyderabad and re-transfer the same to the VIII Chief Metropolitan Magistrate, Hyderabad.

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the State of Telangana.

The offence punishable under Section 452 IPC is triable by a Judicial Magistrate of First Class and, in case, the Magistrate feels that punishment to be imposed is more than the jurisdiction conferred on him, there is a specific procedure under Criminal Procedure Code to refer the matter to the Chief Judicial Magistrate after recording the finding that the accused has to be imposed punishment, more than the power conferred on the Magistrate. Therefore, mere prescribing maximum sentence of seven years is not a ground to set aside the order in Tr.Crl.MP.No.1067 of 2016 dated 08.08.2016 and re-transfer C.C.No.122 of 2013. Even, according to Section 320 IPC, the offence punishable under Section 452 IPC, house-trespass after preparation for hurt, assault or wrongful restraint, is cognizable and non-bailable and any Magistrate is competent to try the matter. Therefore, on that ground, C.C.No.122 of 2013 cannot be withdrawn and re-transferred to the Court of VIII Chief Metropolitan Magistrate, Nampally, Hyderabad. It is also clear from the record that C.C.No.69 of 2015 is pending on the file of IX Special Magistrate, Erramanzil, Hyderabad, filed by the respondent for the offences punishable under Sections 338,

323 IPC read with 34 IPC and Section 181 of the Motor Vehicles Act. The date of offence in both the cases is one and the same i.e. 14.09.2012 and Crime Nos.169 and 170 of 2012 were registered. Time of incident is 4.15 p.m. Thus, it appears that both the C.Cs, covered by the complaint, arise out of the same incident. Therefore, it is appropriate to decide both the matters by the same Court. Hence, I find no ground to set aside the order, in Tr.Crl.MP.No.1067 of 2016 dated 08.08.2016, passed by the learned Metropolitan Sessions Judge, Hyderabad, and re-transfer C.C.No.122 of 2013 to VIII Chief Metropolitan Magistrate, Nampally, Hyderabad.

In the result, the Transfer Criminal Petition is dismissed at the stage of admission. Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:16.12.2016
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