

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION NO.268 OF 2016

ORDER:

This petition is filed under Section 407 Cr.P.C. to withdraw C.C.No.179 of 2016 pending on the file of III Special Magistrate, Cyberabad at Hastinapuram, Ranga Reddy District and transfer the same to any competent Court in pursuance of the order passed by Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar in CrI.MP.No.549 of 2015 dated 29-08-2016 withdrawing pending C.C. on the file of II Special Magistrate Court, Cyberabad and transfer the same to III Special Magistrate Court, Cyberabad at Hasthinapuram.

The main contention raised before this Court is that when the Additional Metropolitan Sessions Judge disbelieved the allegation made against the Presiding Officer of the Court of II Special Magistrate Court ought not to have passed order withdrawing the C.C.No.375 of 2013 pending on the file of II Special Magistrate to III Special Magistrate Court, Cyberabad, Hastinapuram.

From the perusal of the order passed by the Court, it is evident that the Court at the end of para 5 concluded that it is necessary to transfer the case to any other Court, while disbelieving the apprehension.

Section 408 Cr.P.C. conferred power on the Court to withdraw and transfer any file to any subordinate Court. But such power is to be exercised within the parameters laid down under Section 408 Cr.P.C, when the Court below disbelieved the specific allegations made against the Presiding Officer, the Court below

ought not to have withdrawn and transfer on judicial side. But the learned Sessions Judge is at liberty to withdraw and transfer the matter on administrative side to any other Court. The Additional Metropolitan Sessions Judge is not competent even to pass such an administrative order. Therefore, the order passed by the Additional Metropolitan Sessions Judge withdrawing and transfer of the case pending on the file of II Special Magistrate Court, Cyberabad, Hasthinapuram to the III Special Magistrate Court, Cyberabad, Hasthinapuram is *prima facie* erroneous. Therefore, the order of learned Additional Metropolitan Sessions Judge is hereby set aside, while withdrawing the C.C.No.375 of 2013 now pending on the file of III Special Magistrate Court, Cyberabad in pursuance to the order passed by the learned Additional Metropolitan Sessions Judge and transferred the same to its original Court. However, it is left open to the Metropolitan Sessions Judge to exercise his jurisdiction under Section 408 Cr.P.C. for effecting any withdrawal and transfer of the case to any Court on administrative side.

With the above direction, this Transfer Criminal Petition is disposed of. Consequently, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

22.12.2016

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