

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

TRANSFER CRIMINAL PETITION No.12 OF 2017

ORDER:

The present petition is filed under Section 407 of the Code of Criminal Procedure challenging the order dated 08.12.2016 in Tr.C.M.P.No.1248 of 2016 passed by the Principal Sessions Judge, Rajahmundry.

Heard Sri T.V.Jaggi Reddy, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Telangana.

Substantially the request of the petitioner is to withdraw Calender Case No.113 of 2016 pending on the file of the Additional Judicial Magistrate of First Class, Alamuru, East Godavari District, and transfer the same to the Court of the Judicial Magistrate of First Class, Anaparthi, East Godavari District, or to any other Court. The reasons explained in making such a request are stated in paragraph 5 of the affidavit filed in support of the present petition and the same reads thus:

“I submit that I applied for the certificate copies of the CrI.M.P's filed by the 2nd respondent herein and the docket order the same was furnished to me on 30-8-2016. On perusal of the same manifest that CrI.M.P.No.821/16 is filed on 12-8-2016 u/s 70 (2) Cr.P.C for recall of NBW and the docket proceedings state that Accused present remanded to Judicial custody till 24-8-2016. The 2nd

respondent also filed Crl.M.P.No.895/16 under 445 of Cr.P.C., on 12-8-2016 the docket proceedings on the same shows that received cash Rs.10,000/- towards deposit of surety and of accused. The docket proceedings dt.24-8-2016 states that NBW recalled 11-8-2016.”

Learned counsel for the petitioner, while pointing out what has been recorded in paragraph 7 of the order of the learned District Judge in the above transfer CMP, submits that when the 2nd respondent was remanded to judicial custody on being produced on execution of NBW, the learned Magistrate, without there being a separate application for grant of bail, not only granted bail, but also accepted cash security by granting permission in a petition filed under Section 445 of Cr.P.C, which, according to learned counsel for the petitioner herein, was filed by a different advocate.

From the order of the learned District Judge, it appears, the complaint made by the petitioner herein is on administrative side. Learned District Judge made reference to the said complaint in paragraph 8 of the order passed by him. Holding that the allegations are unfounded, but based on apprehensions and assumptions, the learned District Judge rejected the request for transfer of the case as requested by the petitioner.

No doubt, there can be some sort of apprehension. But, in the instant case, the learned District Judge, in paragraph 8 of the order,

has clearly recorded a finding that the allegations are unfounded, but based on apprehensions and assumptions. Even, the petitioner, in his affidavit filed in support of the present petition, has again ventilated that there is an apprehension. Just basing on apprehensions, miscarriage of justice cannot be viewed. There is no tenable ground for withdrawal of the aforesaid Calender Case and to make it over to any other Court. Further more, the first preference of the Court to which the petitioner sought transfer of the case is the Court of Judicial Magistrate of First Class, Anaparthi, East Godavari District. In fact, he is not supposed to have any choice as such. Hence, there is no merit in the present petition.

Accordingly, the Criminal Petition is dismissed at the stage of admission. Miscellaneous Petitions, if any, pending in this petition, shall stand closed.

A. SHANKAR NARAYANA, J

January 20, 2017.

v v