

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

TRANSFER CRIMINAL PETITION No.75 OF 2017

ORDER:

The present petitioner is party-in-person. He requests to exercise the power under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') to withdraw Sessions Case No.195 of 2016 from the file of Sessions Judge, Mahila Court, Visakhapatnam and to transfer it to any other Sessions Court, Visakhapatnam.

2. The reasons for making such a request have been stated in paragraph Nos.7 to10. For proper appreciation in arriving at whether to accede to the request or not, it would be appropriate to extract the same, which are thus:

"7. The present presiding officer, first adjournment was given on 05.06.2015 and hear the matter, and posted for 12.06.2015, called the police and ordered to production of documents and posted for 22.06.2015 the Police has filed memo but not filed any documents and above petition, as such we are unable to produce the same against the prosecution, hence they prayed the Hon'ble Court may proceed further the case in the interest of justice. On 21.07.2014 the Police authorities committed they will produce the documents on next adjournment, but on 21.06.2015 the said police officer again stated that they are unable produce the same against stated that they are unable produce the same against the prosecution. But the petitioner never asked the police authorities in their petition to come over the Hon'ble Court, the additional public

prosecutor directed the police to attend before the court, unnecessarily the Hon'ble Court has admitted the Additional P.P. version. Hence intentionally the As per to the procedure if additional PP not filed counter the petition should be allowed, intentionally dismissed the petition. As per procedure the defence side has to get witness, without getting of witness surprisingly the Hon'ble Court dismissed the petition. Further posted for argument, hence objection Memo filed by petitioners on 30.07.2015. As we are having sufficient witnesses, hence I filed memo but same also dismissed. On 15.10.2015, hence the Hon'ble Court showing partiality, 4th Accused filed a Crl. MP No.450/2011. Which is allowed. He asked 6 documents but 5th town police submitted in Hon'ble Court 3 documents only. 4th document filed in 2015. This is not attested. Same not marked.

8. It is submitted that the petitioner herein on 19th December 2013 filed a petition Crl.M.P: 1544 of 2013 under section 233 (3) Cr.P.C. to summon the then commissioner of Police to adduce evidence on behalf of the appellants herein. As the signatures on Ex P1 are disputed signature which is to be proved, and also other three official witnesses. The respondents/complainants not filed counter that MP objecting for examination of witnesses. Hence the lower court was pleased posted for arguments by giving sufficient time for filing of counter. Whereas, the appellants filed written arguments. Even then, the lower court was pleased close the said MP without having reasons on 22nd July 2015. As the MP had been closed, the appellants filed another application Crl.M.P: 216 of 2016 praying to reopen the Crl.MP 1544 of 2013 to appropriate orders. Whereas, Crl.M.P. 216 of 2016 had been dismissed on: 12th September 2016 without proper reasons. Therefore, the appellants herein lost the opportunity in

adducing the evidence before the lower court and the proceedings were initiated in favour of the prosecution/defacto complainant. The appellants herein filed another petitioner Crl.M.P: 236 of 2015 under section 233 (3) of Cr.P.C. praying to summon the official witnesses to produce the public documents which are to be proved on behalf of the appellants herein. On behalf of the respondents objection counter had not failed. But the lower court was pleased to dismiss without any reasons on 23rd July 2015. It was ordered that: “since Ex D6 was already exhibited by PW2, there is no necessity to summon Commissioner of Police, Visakhapatnam city, to speak to its contents once again. Under all these circumstances I am of the considered view that there is no necessity to summon principals of Mrs AVN College and NVP Law College or Commissioner of Police, Visakhapatnam city. This point is answered accordingly.

9. Without considering that the prosecution failed to prove the case beyond all the reasonable doubts, as it failed to adduce evidence. The lower court was pleased to pass the calendar and judgment on: 16th December 2016 by case against A4 is separated on: 8th November 2016 and numbered as SC 195 of 2016. The calendar passed that accused 1 to 3 found guilty for the charge under section 323 read with section 34 and they were convicted under section 235 (2) of Cr.P.C. the accused 1 to 3 are sentenced to pay Rs.1000/- each. In default to suffer simple imprisonment for a period of three months. It is submitted that PW-1 deposed in Cross examination page-4 line-29 & 30 as follows. “It is true Ex- P1 does not contain the signature of my daughter. But in Ex P1 reflected name M. Satyavathi and also PW-2 deposed page 4 line no 19 to 23 As follows: The signature shown to me on complaint is that of mine and the another signature belongs to my mother,

My mother name is M. Appalanarasamma. It is true my mother put her signature on Ex P1 as M.M.Appalanarasamma. If signature of PW2 does not content in Ex-P 1. Whose the signature. PW1 signed as MM Appaanarasamma". It reveals that there are different signatures by PW1 at different places. In family pension she used to sign as Golagani Appalanarasamma. This fact had been admitted in cross examination. Therefore, PW1 is making false representations before the public offices and before the Honourable Court. The pension account maintaining as Golagani Appalanaasamma.

10. Therefore, under these circumstances, the presiding officer in the lower court is prejudicing my rights and there are likely hood chances for conviction instead of acquittal though the prosecution failed to prove the case beyond the reasonable cause."

3. So far as the facts-situation is concerned, he has referred to in paragraph Nos.1 to 6, which, of course, is unnecessary to advert to since they relate to what transpired during the pendency of the Sessions Case.

4. Heard Sri Murikithi Madhusudhana Rao - party-in-person and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

5. Certain events that transpired, which are of vital significance, require advertence. Originally, the petitioner, who is arraigned as accused No.4 along with accused Nos.1 to 3 were examined in Sessions Case No.23 of 2007. The present Sessions Case

is a split up case from the said Sessions Case. It is not as though the petitioner avoided proceedings before the Court by jumping the bail, but it is on account of petitioner's protest, it appears that the learned Sessions Judge separated his case by assigning split up case in S.C. No.195 of 2016 and disposed of the original case in S.C. No.23 of 2007 by pronouncing the judgment on 16.12.2016. It resulted in acquittal in so far as charge punishable under Section 354 read with 34 IPC is concerned, but, however, they were convicted as they were found guilty for the charge under Section 323 read with 34 IPC and sentenced to pay a fine of Rs.1,000/-, and in default to suffer simple imprisonment for a period of three months. In the said case, the prosecution examined PWs.1 to 5 and marked Exs.P1 to P4, whereas on behalf of accused Nos.1 to 3, DWs.1 to 4 were examined and Exs.D1 to D-15 were marked and, of course, MO.1 - torn top of Punjabi dress, was also marked.

6. The reasons assigned by the petitioner herein, which are extracted in the above, at the outset, has to be stated as not convincing. When adverse orders were passed, the petitioner has, admittedly, not challenged. For instance, the order in Crl.M.P. No.216 of 2016 that was dismissed where a request was made to reopen Crl.M.P. No.1544 of 2013, which was filed under Section 233 (3) of the Code to summon the then Commissioner of Police to adduce his evidence. Whatever the petitioner expressed as to that the

Presiding Officer is showing bias is nothing but an apprehension and that cannot be construed as reasonable apprehension and certainly, cannot a ground to accede to his request of transferring the case from the file of Sessions Judge, Mahila Court, Visakhapatnam to any other Sessions Court at Visakhapatnam. In fact, the petitioner ought to have cooperated with the Court to try him also along with accused Nos.1 to 3, and if he is really aggrieved by the judgment in case it is ended in conviction for any of the charges, for redressal of his grievance, there is always remedy open by approaching the appropriate forum. Certainly, it is not a case where the request can be acceded to.

Therefore, the Transfer Criminal Petition is dismissed at the admission stage itself. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

March 28, 2017.

Mgr