

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CrI.R.C.No.1636 of 2017

ORDER:

The criminal revision case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') is filed by the petitioners-accused assailing the order, dated 07.10.2016, of the learned Sessions Judge, Machilipatnam, Krishna District, passed in Tr.CrI.MP.No.138 of 2016.

2. I have heard the submissions of *Sri Koteshwara Prasad*, learned counsel for the petitioners, and of the learned Public Prosecutor, State of Andhra Pradesh representing the respondent, at the stage of admission. I have perused the material record.

3. By the order impugned in this revision, the learned Sessions Judge dismissed the transfer petition filed by the petitioners, under section 408 of the Code, and rejected their request to transfer the Criminal Appeal No.192 of 2012 from the file of the Court of the learned XI Additional Sessions Judge, Gudivada, to the file of the Court of the learned I Additional Sessions Judge, Machilipatnam. Hence, the petitioners filed this revision case.

4. The case of the petitioners and the submissions made on their behalf are as follows: "The petitioners are the appellants in the afore-stated Criminal Appeal No.192/2012 originally pending on the file of the Court of the learned I Additional Sessions Judge, Machilipatnam. The then Presiding Officer made certain comments against the learned counsel for the petitioners. Then the petitioners expressed their intention to move transfer petition. The said learned Judge relieved himself by recusing to take up the hearing of the appeal and further expressed that he would address a letter to the Principal Sessions Judge of the Sessions Division, Machilipatnam, and further expressed his opinion that

he would transfer the appeal to any other Additional Sessions Court, located outside Machilipatnam. Since he was in-charge of the post of the learned Principal Sessions Judge of the Division, in his said capacity he transferred the appeal to the Court of the learned XI Additional Sessions Judge, Gudivada, though there are four additional Courts of session in Machilipatnam. The said place, Gudivada, is too far away from Nagayalanka. The petitioners earlier filed Tr.Crl.M.P. No. 198 of 2014 before the Sessions Court and the same was dismissed on 19.12.2014. Aggrieved of the said orders of dismissal, the petitioners filed Tr.Crl.P. No.13 of 2015 before this Court. However, the said petition filed by the petitioners was dismissed by this Court by Orders dated 17.04.2015. A small incident between the Bench and the advocate caused inconvenience to the petitioners. Hence, the petitioners filed fresh transfer petition in Tr.Crl.MP.No.138 of 2016 once again before the Court of Session. By the orders impugned in this revision the learned Principal Sessions Judge dismissed the said petition. In deed no counter is filed by the respondent resisting the said transfer petition of the petitioners. The learned Principal Sessions Judge dismissed the petition of the petitioners as this Court while dismissing the Tr.Crl.P. No.13 of 2015 observed that the petitioners failed to plead and produce any material to show the distance between Nagayalanka and Gudivada and also the distance between Machilipatnam and Nagayalanka and further held that the case is not a fit case to consider the request to retransfer the appeal which was once transferred on administrative grounds. At the hearing of the fresh petition filed by the petitioners, they produced before the Court below, Google Map showing that the distance between Nagayalanka and Gudivada is 65.4 Kms and that the distance between Machilipatnam and Nagayalanka is 48.2 Kms. The learned Principal Sessions Judge while passing the impugned orders did not consider the facts properly and failed to appreciate the inconvenience that is being caused to the petitioners/appellants on account

of the transfer made on administrative grounds by the then I Additional Sessions Judge that too with prejudicial mind. For no fault of the petitioners, they are being put to sufferance as their village is a Coastal village and as the appeal was transferred from the Court at the District Head Quarters to a Court situated in a small Town. The learned Principal Sessions Judge simply dismissed the transfer criminal petition further observing that retransfer of the case is not correct and proper and that retransfer of the appeal would not be in accord with the judicial discipline and that there are no merits in the petition of the petitioners. The said observations in the impugned order are erroneous and the learned Judge ought to have exercised the powers and jurisdiction to remedy the injustice. If the revision case is not allowed and the relief is not granted the petitioners suffer serious loss.”

5. I have given detailed and thoughtful consideration to the facts and submissions.

6. The petitioners' afore-stated Criminal Appeal 192/2012 was originally pending on the file of the Court of the learned I Additional Sessions Judge, Machilipatnam. On account of some comments or remarks made or exchanges between the then learned Judge and the learned advocate for the petitioners/ appellants, the said learned Judge recused himself from the matter. Further, in his capacity as an Additional Sessions Judge, he addressed a letter to the Principal Sessions Judge seeking transfer of the appeal from the file of his Court. Further, in his then capacity as in-charge Principal Sessions Judge he transferred the appeal to the Additional Sessions Court at Gudivada, a place outside Machilipatnam, though there are other additional Sessions Courts at Machilipatnam. Be it noted that, on 19.12.2014, the Sessions Court dismissed earlier transfer petition in Tr.CrI.M.P.No.198 of 2014 filed by the petitioners seeking the same relief. This Court dismissed their Tr.CrI.P. No.13 of 2015 by Orders dated 17.04.2015 and confirmed the orders of the learned Sessions

Judge. In the said orders this Court also observed that the Criminal Appeal was transferred on administrative grounds from the file of the learned I Additional Sessions Court, Machilipatnam, to the Additional Sessions Court, Gudivada. The petitioners once again filed the subject Tr.Crl.MP.No.138 of 2016 before the Court of Session. On the dismissal of the said petition, they filed the present revision case urging the self same contentions. Apart from the contention of the petitioners that the transfer of their appeal was made by the then learned Additional Sessions Judge to a Court outside Machilipatnam with a prejudicial mind, the only other contention of the petitioners is that the said place, Gudivada, is too far away from Nagayalanka. Even according to the own showing of the petitioners the distance between Nagayalanka and Gudivada is 65.4 Kms.; and, the distance between Machilipatnam and Nagayalanka is 48.2 Kms. Thus, the difference between the two distances is only about 15 Kms., which is no distance at all by any present standards. It is not their case that their place and Gudivada are not well connected by road.

7. In that view of the matter this Court finds that the instant case is not a fit case to consider the request of the petitioners for transfer.

8. Accordingly, the Criminal Revision Case is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

29.06.2017
Vjl

M.Seetharama Murti, J