

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.CRL.P.No.283 OF 2015

ORDER:

This transfer criminal petition is filed under Section 407 of Cr.P.C with a request to withdraw S.C.No.422 of 2012 pending on the file of Assistant Sessions Judge, Miryalaguda, for the offence punishable under Sections 306, 498-A, 494, 509 and 406 IPC and transfer the same to the any competent Court at Nalgonda Head quarters.

2. The petitioner is the *de facto* complainant, listed witness LW.1 and prime witness to establish the guilt of the 2nd respondent/accused in Sessions Case.

3. The main reason for filing this petition is that the petitioner apprehending danger to petitioner's life to appear before the Court at Miryalaguda and gave a representation on 27.02.2015 to the District and Sessions Judge and to the Superintendent of police, Nalgonda District on 23.02.2015 and also to the Assistant Sessions Judge on 16.12.2015 complaining the danger to his life in the hands of the accused. Despite giving representations, no protection is provided to him and therefore, it is difficult for him to appear as witness before the Assistant Sessions Judge, Miryalaguda during trial to give evidence being the *de facto* complainant.

4. Learned counsel for the petitioner in support of his contentions placed the complaint lodged with the

Superintendent of Police dated 23.02.2015, Assistant Sessions Judge and District and Sessions Judge to substantiate his contention that he is facing life threat or danger to his life to appear before the Court as witness at Miryalaguda.

5. During hearing, learned counsel for the petitioner reiterated the contentions in the petition mainly that the petitioner is facing life threat and in case the petitioner is required to appear before the Court as witness, there is every possibility of danger to life. Being the *de facto* complainant, unless the petitioner is examined as witness before the Court, it is difficult to prove the complicity of the 2nd respondent before the Court.

6. Learned counsel for the 2nd respondent/accused contended that almost major part of trial is over except examination of the petitioner, who is prime witness in the case and as on today 11 witnesses were examined and no such incident was reported either to the Presiding Officer or to any one. Even C.C.No.122 of 2015 filed against the 2nd respondent and Garlapati Sekhar for the offence punishable under Section 506 IPC i.e. criminal intimidation, was ended in compromise and compounded the offence under Section 320(8) Cr.P.C., which is placed on record. The petitioner himself compounded the offence with the 2nd respondent and the alleged threat to life or danger to the petitioner is baseless and requested to dismiss the petition.

7. Considering rival contentions, perusing the material available on record, the sole point that arises for consideration is:

“Whether the Sessions Case No. 422 of 2012 pending on the file of the Assistant Sessions Judge, Miryalaguda can be withdrawn and transferred to any Court at Nalgonda Head Quarters on the ground that the petitioner is facing life threat or danger to his life to appear before the Court at Miryalaguda?

POINT:

8. In any view of the matter, the Sessions Case is pending since 2012 except the petitioner complaining twice by sending representation to the District Judge and report to the Superintendent of Police, no other material is produced to establish that he is facing life threat. Curiously, the 2nd respondent compounded the offence with the petitioner in C.C.No.122 of 2015 on 15.10.2015 i.e almost eight months after sending representation to the Superintendent of Police and to the District and Sessions Judge. If really, the petitioner is facing any life threat or danger to appear before the Judicial Second Class Magistrate, Nalgonda, he would have complained about the same in the said C.C. Appearance before the Judicial Second Class Magistrate along with other accused Yadavelli Vijaya Kumar and Garlapati Sekhar in C.C.No.122 of 2015 itself indicates that there were no such apprehension. Even otherwise, the petitioner did not file any private

complaint against the 2nd respondent or any other person when the police failed to register FIR and investigate into the incident mentioned in the report dated 23.02.2015. Having waited for more than two years, the present petition is filed on the ground that he is facing life threat or danger.

9. As per Section 407 Cr.P.C., the High Court can exercise power to withdraw and transfer any matter pending under the control of it, if the apprehension of the petitioner is based on any reasonable ground. A vague allegation is made in the petition that he is facing life threat from the 2nd respondent and this contention is not based on any material and that the petitioner having prosecuted the case sufficiently for a long time cannot contend that the petitioner is facing life threat. Similar question came up before the Apex Court in **Parminder Kaur (SMT) v State of Uttar Pradesh and another**¹, wherein the Supreme Court held that the petitioner making vague and unfounded allegations in transfer applications against respondent No.2 would not form the basis for withdrawal and transfer while exercising power under Section 406 Cr.P.C. The facts of the above judgment are that the petitioner has to go to Rampur to attend the proceedings in the trial Court, her safety would be in danger or she apprehends physical harm to herself from respondent No.2 or anti-social elements and the Court concluded that it would be too nebulous a ground for transferring the cases from the trial Court, Rampur to the

¹ (2007)15 SCC 307

Court of competent jurisdiction at Delhi or Chandigarh. The petitioner has not substantiated her apprehension of threat or bodily harm or intimidation from respondent No.2 or other anti-social elements as alleged by her.

10. The facts of the above case are almost identical to the present facts of the case. Here also the petitioner made allegations and filed copies of representations submitted to the Sessions Judge and report lodged with the Superintendent of Police and did not file any private complaint against the 2nd respondent. Apart from that compounding offence with the 2nd respondent in C.C.No.122 of 2015 on 15.10.2015 is another strong circumstance to disbelieve the said ground.

11. Learned counsel for the petitioner contended that C.C.No.122 of 2015 is nothing to do with the case of the petitioner.

12. As the petitioner complained life threat after examination of 11 witnesses excluding him, who is listed as LW.1 in the sessions case, the trial Court is bound to provide necessary protection to the witness, if really, the petitioner is facing such life threat. A similar question came up in **Ranjit Singh and another v Popat Rambhaji Sonawane and others**², the petitioner sought for transfer of Sessions Case on the solitary ground that the complainant's safety would be in danger was not granted. Where a legal practitioner having a house at

² AIR 1983 SC 292

Pune sought transfer of a session case for the offence punishable under Sections 395, 341 and 504 IPC against certain persons (as committed by Magistrate on private complaint) from Pune to Indore on solitary ground that if transfer was not granted, his safety would be in danger, that was too nebulous a ground from transferring the case in which all four witnesses were from Pune. When the State counsel undertook to extend all possible facilities as directed by the Supreme Court to ensure safety and security of the petitioner, the Supreme Court rejected the transfer petition after issuing necessary directions for safety and security of petitioner for the period required or recording of petitioner's evidence.

13. In another judgment of the Apex Court in **Usmangani Adambhai Vahora v State of Gujarat and another** (AIR 2016 SC 336) after commencement of trial a petition was filed for withdrawal and transfer, apprehending that justice will not be done to him if the matter is tried by the Court, where the matter is pending. But the Court held that it is not a ground to withdraw since the apprehension is not based on any substantive material. When the trial is commenced and 11 witnesses were examined before the Sessions Court notwithstanding the alleged compounding the offence in C.C. and that too all the witnesses are very nearby place, within the territorial limits of the trial Court. In such a case, it is appropriate to direct the State to provide necessary police protection to the witness to wipe out the apprehension in

petitioner's mind about danger to her life to appear before the Court as witness. Therefore, at this stage, after examination of 11 witnesses, I find no ground to withdraw and transfer S.C.No.422 of 2012 pending on the file of Assistant Sessions Judge, Miryalaguda to any other Court at Nalgonda District.

14. Accordingly, the criminal petition is disposed of directing the State to provide necessary protection to the petitioner, which is prime duty of the police as and when she attends the Court as a witness in Sessions Case No.422 of 2012, pending on the file of Assistant Sessions Judge, Miryalaguda.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

08.12.2017
kvrn

M.SATYANARAYANA MURTHY,J

