

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

TRANSFER CRIMINAL PETITION No.211 of 2017

ORDER :

This petition is filed by the petitioner under Section 407 Cr.P.C., seeking transfer of Criminal Appeal No.77 of 2016 on the file of the II Additional District and Sessions Judge, Parvatipuram, to any competent Court in the Vizianagaram District.

Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State before ordering notice to the 1st respondent/ accused.

The petitioner and the 1st respondent herein are the de facto complainant and the accused respectively in C.C.No.2 of 2014 on the file of the Additional Judicial Magistrate of First Class, Parvathipuram, and against the trial Court's conviction judgment dated 30.05.2016, the accused/ 1st respondent herein filed Criminal Appeal No.77 of 2016, where the petitioner herein was arrayed as 1st respondent.

The petitioner is seeking transfer of the case saying that the learned Judge of the appellate Court is prejudicial towards him and imposing heavy costs for every adjournment and that there is confrontation of the Court in the motor vehicle accident claim

matter, that is in the mind of the learned Judge and it will result injustice, if the matter being disposed of by him.

In fact, the so called issue, if at all anything taken place untoward in a motor vehicle accident claim matter, the petitioner/de facto complainant cannot say that the learned Judge is prejudicial towards him. It is needless to say that the Judicial Officer cannot have any prejudice in his mind and he shall not reflect the same while delivering the judgment and decide the same on merits, according to law, impartially and uprightly. Keeping this in mind, the appellate Court shall dispose of the Criminal Appeal uninfluenced by either on the transfer petition averments or the observations or for anything happened between the de facto complainant and as advocate representing any party in a motor vehicle accident matters, if at all such incident happened. It is needless to say that the appellate Court cannot impose costs time and again in disposal of a Criminal Appeal, more particularly, from the three Judges Bench expression of the Apex Court in Bani Singh v. State of U.P.¹ that as per Sections 386 and 390 Cr.P.C. the appellate Court need not wait for the presence of the parties and submission of arguments and it can decide the matter, even parties failed to represent and if there are complicated questions of fact, at best, by its attending of the legal aid counsel. Hence, instead of imposing

¹ AIR 1996 SC 2439

costs, the appellate Court shall dispose of the matter on merits, even the parties are not cooperating.

With the above directions and observations, the Criminal Petition is disposed of, directing the appellate Court to decide the Criminal Appeal, impartially, on own merits.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:10-10-2017

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