

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

TRANSFER CRIMINAL PETITION No.193 OF 2017

ORDER:

Heard learned counsel for the petitioner, seeking transfer of Criminal Appeal No.62 of 2016, pending on the file of Principal Sessions Judge, Kurnool to anyplace otherthan Kurnool, Ananthapur and Kadapa Districts of Andhra Pradesh.

2. Heard at length the learned counsel for the petitioner and also the public prosecutor, representing the 1st respondent – State, before ordering notice to the 2nd respondent and perused the grounds urged in the transfer application.

3. It is the appeal against acquittal of the case for the offences punishable under Section 498A IPC and Sections 3 and 4 of Dowry Prohibition Act, by calendar case No.458/2013, judgment of learned Special Judicial Magistrate of First Class for Prohibition and Excise, Kurnool, dated 16.09.2014.

4. So far as the apprehension to the petitioner to attend the Court alleging there is a possibility of extracting money by the defacto complainant party concerned, the law is very clear from the three bench decision of the Hon'ble Apex Court in

Bani Singh Vs. State of U.P.¹, that appellant need not even attend and court need not insist in deciding an appeal, his presence. Thus the respondents/accused if representing through advocate is enough for the appellate court in deciding the appeal without insisting their presence.

5. So far as the allegation of the learned judge proceeding with preconceived motion concerned, it is quite baseless to appreciate. The only ground urged for that is the matter was referred to settlement to Lok Adalat and it could not be settled and the judge is under the opinion that it is not settled at the instance of the accused/respondents.

6. In fact, the latest two Judge Bench expression of the Hon'ble Apex Court dated 27.07.2017 in CrI.A.No.1265 of 2017 (SLP (CrI.) No.2013 of 2017 in **Rajesh Sharma & Others Vs. State of U.P. & another**) is very clear that it must be the duty of the every court to see that matrimonial matters rather deciding on merits first effort be made for settlement if any. There is nothing to find fault that endeavour of the appellate judge even including in the process of appeal. However, it is the submission that the counsel for the respondents could not attend for two adjournments posted day to day. In fact, the matter is stated to be posted to decide on merits. In fact, such a recourse of the judge is nothing legally wrong as the three bench

¹ AIR 1996 SC 2439

judgment of the Apex Court in ***Bani Singh's case (referred supra)*** categorically stated that court need not postpone hearing of the matters of appeals and revisions even the parties failed to cooperate but for to decide on merits, needless to say, if at all there are any complicated questions of fact and law involved, by taking legal aid counsel assistance for those not representing.

7. Having regard to the above, there are no grounds to transfer the case, however, to sub-serve the ends of justice, instead of dismissal, this transfer criminal petition is disposed of, directing the lower appellate court to receive any written arguments or permit submission of oral arguments on behalf of the respondents by posting the matter on 21.09.2017 or on any other day convenient to the court to be given to the advocates to submit.

8. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO,J

12.09.2017
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