

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Transfer Criminal Petition Nos.63 and 64 of 2017

COMMON ORDER :

The petitioner in both the Transfer Criminal Petitions is the defacto-complainant by name Manepalli Mohan Rao in C.C.No.99 of 2014 and 114 of 2015 on the file of the Addl.Judl.Magistrate of First Class, Narsapur of West Godavari district, Andhra Pradesh. Among the 6 same respondents shown in both the petitions the R.3-Jakkam Venkayya and his wife R.4-Jakkam Sunitha are A.1 and A.2 of C.C.No.99 of 2014 and R.5-Jakkam Venkata Surya Nagendra Kumar and R.6-Jakkam Siva Naga Sairam are the A.1 and A.2 of C.C.No.114 of 2015. The prayers in both the petitions are that the two accused in each of the two cases are close relatives and associates with each other. The defacto-complainant took on lease Ac.1-36cents of agricultural land of Rustumbada, Narsapur Mandal, West Godavari District, from Jakkam Venkayya and his wife Jakkam Sunitha and later they put the land for sale and the bargain settled for 30lakhs of which he paid 20lakhs on 09.01.2012 and they executed an agreement of sale on even date, the land was subject matter of mortgage debt and the title deeds were with the bank and the petitioner/ defacto complainant paid another Rs.8,65,000/- and fallen due only Rs.1,35,000/- out of total sale consideration pursuant to the sale agreement and the said Jakkam Venkayya and his wife Jakkam Sunitha, having discharged the mortgage debt due to the Bank of India, again mortgaged the land with Siram City Union Finance Limited, Razolu branch on 28.05.2013 and also

executed undertaking letter dated 01.12.2013 to the petitioner about payments made by them and what is due and not disclosed about mortgage with Sriram City Union Finance Limited, for which on knowing the wrongful efforts of R.3 and 4, the petitioner lodged a complaint on 04.03.2014 against them with Narsapur Town Police station vide Cr.No.28 of 2014 for the offences punishable under Sections 406 and 420 IPC which is covered by C.C.No.99 of 2014 and from the police investigation and final report taken cognizance and the case is coming for trial. The petitioner also filed O.S.No.13 of 2014 in the Additional District Court, Narsapur for specific performance of the sale agreement dated 09.01.2002 and also filed temporary injunction application that was ended in dismissal which is subject matter of C.M.A.No.1030 of 2014 with CMAMP No.1701 of 2014 with interim order. The interim order of this Court was pending C.M.A., dated 29.04.2014 in CrI.P.No.1382 of 2014 and violating it there was a trespass by respondents 3 to 6 on 24.05.2014, for which Narsapur police, on the report of the petitioner, registered Cr.No.92 of 2014 which is covered by C.C.No.114 of 2015 thereby that case is also pending.

2. With the above facts, he sought for transfer of the two cases with the further grounds for the transfer that he is presently residing at Secunderabad and the respondents 3 to 6 are anti-social elements and they attempted to kill him and he is apprehending danger to his life for attending Court as there is every possibility of physical harm to him to attend as they are proclaiming to kill him anywhere in West Godavari district. He wants to adduce evidence

assisting prosecution in both the cases and to facilitate him, sought for the two cases are to be transferred from the AJFCM Court, Narsapur to any other Court, other than West Godavari preferably to East Godavari.

3.The additional material filed by him in relation to O.S.No.13 of 2014 and the suit filed by the 3rd respondent herein as O.S.No.43 of 2013 which are undisputedly pending on the file of the learned Addl.District Judge at Narsapur only which he is prosecuting.

4. Even from the First Information Report in Cr.No.92 of 2014 covered by C.C.No.114 of 2015 dated 24.05.2014, there is nothing showing apprehension of danger to his life and the said case taken cognizance was for the offences punishable under Sections 447 and 427 read with 34 IPC and the C.C.No.99 of 2014 taken cognizance for the offence punishable under Section 420 and 406 r/w 34 IPC. There is nothing even from his side to show there is any incident at any particular date happened against him to suspect apprehension but for the stray sentence of there is apprehension which shows without basis much less by giving of any police report for he already gave complaints covered by the two Calander Cases supra to the police.

5. Having regard to the above, there is no foundation for his apprehension including from the additional material in relation to the two suits pending between them filed which are undisputedly pending only in the civil Court/ ADJ, Narasapur, and it is not even a

case of he is unable to attend the civil Court to pursue the suits. No doubt for a civil case, there is no requirement of attendance on every adjournment once representing through an advocate and in fact same is also the case for he is the defacto-complainant and the attendance required is for giving evidence. It is not even a case of he filed any application to conduct prosecution either under Section 302 or Section 24(8) proviso of the Amended CrPC, much less with a permission for attendance on every adjournment. Needless to say if at all from what he says of he wants to assist the prosecution, thus he can do so by engaging a private advocate for which he need not attend for every adjournment of two criminal cases. In view of the above, there are no justifying grounds for the Court to transfer the two cases.

6. Accordingly and in the result, both the Transfer Criminal Petitions are disposed of directing the Deputy Superintendent of Police (D.S.P.) Narsapur to provide necessary police assistance to him on payment basis whenever he requires the Court attendance from any apprehension.

7. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date: 17.08.2017
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Dr. B.SIVA SANKARA RAO J,