

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION NO.249 OF 2017

ORDER:

This petition is filed under Section 407(1) of the Code of Criminal Procedure (Cr.P.C.) to withdraw SC.No.147 of 2014 pending on the file of the Principal District and Sessions Judge, Nalgonda and transfer the same to any other competent Court to try the case.

Petitioners herein are the accused in SC.No.147 of 2014 on the file of the Principal District and Sessions Judge's Court, Nalgonda, registered for the offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code (IPC). The trial is in the mid-way and the petitioners filed the present petition for withdrawal and transfer on the ground that the Presiding Officer of the said Court is not allowing the petitioners' counsel to cross examine the witnesses and the Judge himself has been alerting the witnesses by interference on some crucial aspects and thereby, counsel for the petitioners could not mark some contradictions and important omissions in the cross examination of P.W.1, P.W.3 and other witnesses. It is also contended that the petitioners filed an application under Section 311 Cr.P.C. to recall P.Ws.1 and 3 on 18.08.2017 to enable the petitioners' counsel to put certain questions to them along with memo dated 07.09.2017 and after hearing both the counsel, the Court below was pleased to dismiss the petition by order dated 12.09.2017 in Cr1.MP.No.1051 of 2017 with an observation that sufficient time was given to the counsel for cross examination of the witnesses at length and the petitioners are trying to fill up lacunas in the evidence of P.Ws.1

and 3 by cross examining further. The petitioners also filed Criminal Petition No.10061 of 2017 before this Court aggrieved by the order dated 12.09.2017 in CrI.MP.No.1051 of 2017 and this Court dismissed the said petition on 01.11.2017 on the ground of maintainability. Subsequently, the Presiding Officer of the Court below has been conducting proceedings in SC.No.147 of 2014 prejudicial to the interest of the petitioners and hence, requested this Court to withdraw and transfer SC.No.147 of 2014 pending on the file of the Principal District and Sessions Judge's Court, Nalgonda to any other competent Court.

During hearing, learned counsel for the petitioners reiterated the contentions based on the docket orders passed by the Presiding Officer of the Court below to contend that the Presiding Officer has been interfering himself to alert the witnesses so as to deprive the petitioners' counsel from putting certain questions with regard to omissions and contradictions and making the witness alert by the Presiding Officer amounts to showing undue interest in the matter and if the Principal District and Sessions Judge, Nalgonda is allowed to dispose of the matter, there is every possibility of causing prejudice to the petitioners and thereby, the petitioners sought for withdrawal and transfer of SC.No.147 of 2014 to any other competent Court.

Learned Public Prosecutor for the State of Telangana contended that making such serious allegations against the Presiding Officer of the Court below would not serve any purpose and prayed for dismissal of the petition.

The only ground urged in this petition before this Court is that the Presiding Officer of the Court below is acting prejudicial to

the petitioners-accused in a serious crime punishable under Sections 302 and 307 read with Section 34 IPC. Therefore, this Court called for remarks from the Presiding Officer enclosing a copy of this petition. Remarks were received from the Presiding Officer on 05.12.2017 in Dis.No.6771/2017/A-1. The Presiding Officer denied both the allegations while highlighting the allegations made in the affidavit filed in CrI.MP.No.1051 of 2017 in SC No.147 of 2017 where the petitioners' counsel himself admitted that in the evidence of P.Ws.1 and 3, some omissions and contradictions were missed and those contradictions are to be marked in the evidence and the said mistake was noticed only after copies of depositions were verified. Therefore, taking advantage of paragraph No.3 of the affidavit in CrI.MP.No.1057 of 2017, the Presiding Officer denied the allegations made against him while attributing negligence to the counsel on record, who cross examined P.Ws.1 and 3. He also stated in paragraph No.8 of the remarks that the advocates are relief-oriented and causing inconvenience to the witnesses until they come to the terms of the counsel as well as the terms of the accused or otherwise the witnesses are being harassed in all angles and also using coercive methods against the witnesses and the same should not be encouraged and the witnesses should be protected from the hands of the accused as well as the defence counsel being the word of the Apex Court as 'Witness Protection Policy' and therefore, whatever attempt made by him is only to protect the witnesses adopting 'Witness Protection Policy' and finally, requested to transfer the matter to any other District Court for disposal of the matter in accordance with law.

The petitioners made serious allegations against the Presiding Officer, though denied by him while admitting that the petitioners' counsel failed to put certain questions to P.Ws.1 and 3 in CrI.MP.No.1051 of 2017 and the specific paragraph reads as under.

“It is humbly submitted that during the cross examination of P.W.1 as well as P.W.3 some omissions and contradictions were missed to be put to the witnesses due to oversight and as the continuity of the evidence was broken and the said elapse on the part of the petitioners was only a mistake and it was neither intentional nor deliberate. The said mistake was noticed only after the copies of depositions were verified.”

This admission in the affidavit is suffice to conclude that due to negligence of the counsel, P.Ws.1 and 3 could not be cross examined by putting certain questions and attributing the said negligence to the Presiding Officer Court below is nothing but maligning him. Further, the Presiding Officer is ready to get the matter transferred from the Principal District and Sessions Court, Nalgonda to any other competent Court in the District. If such practices are allowed and encouraged, it is difficult for any officer to discharge their functions without fear or favour. Therefore, on the ground that the Presiding Officer of the Court below is acting prejudicial to the interest of the accused-petitioners, the Sessions Case cannot be withdrawn and transferred.

In the remarks of the Presiding Officer, clearly state that the junior counsel for the petitioners' counsel was the Secretary of the Bar Association, Nalgonda and he has always been trying to malign the officers in the entire District including the other officers of the same cadre by making serious allegations. In such case, if the

matter is allowed to be tried by another Judge of the same District, certainly the petitioners will repeat the same so as to prevent the officers from disposing the Sessions Cases. In such case, withdrawing and transferring the matter to any other Court in the district would not serve the real purpose.

The only apprehension of the petitioners is that fair trial is not ensured and that they would not get justice, if the matter is tried by the Principal District and Sessions Judge, Nalgonda. But such apprehension must be based on certain material. In the absence of any material while the admission of the petitioners' counsel himself that he failed to put certain questions by mistake and noticed the said mistake only after receipt of copy of depositions itself would suffice to conclude that the Presiding Officer is acting prejudicial to the interest of the petitioner and the apprehension is not based on any material. The Apex Court in **Gurucharan Dass Chadha v. State of Rajasthan**¹ wherein it is held as under.

“The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt

¹ AIR 1966 SC 1418

relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

Similarly in **Abdul Nazar Madani v. State of Tamil Nadu**², in para No.7, the Apex Court discussed the ground of apprehension that party will not get justice and concluded that the apprehension that he will not get fair justice is absolutely mercurial and cannot be said to be reasonable. Therefore, in the absence of any material to substantiate the ground that he would not get justice, the Court cannot exercise power under Section 407 Cr.P.C. to withdraw and transfer the matter pending on the file of the Principal District and Sessions Court, Nalgonda to any other competent Court within the District.

However, in view of the remarks of the Presiding Officer of the Court below, if the matter is withdrawn and transferred to any other Court within the District, the possibility of making such serious allegations against other officers cannot be ruled out. In such case, it is difficult for any officer, to try and decide the Sessions Cases, after transfer to any other Court within the District. Therefore, taking into consideration, the facts and circumstances of the case and the remarks of the Presiding Officer of the Court below, I find that it is a fit case to withdraw SC.No.147 of 2014 pending on the file of the Principal District and Sessions Court, Nalgonda and transfer the same to the Principal District and Sessions Court, Khammam to try and dispose of the same in accordance with law to wipe out the apprehension in the mind of the petitioners and to ensure fair trial.

² (2000)6 SCC 204

In the result, the Transfer Criminal Petition is allowed withdrawing SC.No.147 of 2014 pending on the file of the Principal District and Sessions Court, Nalgonda and transferred the same to the Principal District and Sessions Court, Khammam to try and dispose of the same in accordance with law. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

18th December 2017
RRB

