

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No. 271 OF 2017

ORDER:

This petition is filed under Section 407 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to withdraw S.C.No. 302 of 2012 on the file of the Court of I Additional Sessions Judge, Kadapa, Y.S.R. Kadapa District (for short, 'the Court below'), and transfer the same to the Court of Principal District and Sessions Judge, Kadapa, Y.S.R. Kadapa District.

2. It is the case of the petitioner-*de facto* complainant that he made a requisition to the District Court, Kadapa, Y.S.R. Kadapa District, to withdraw and transfer the abovementioned sessions case from the file of the Court below to the former Court apprehending that justice will be done may not take place on fair trial. The District Court by notice dated 22-07-2017 rejected the request of the latter on the ground that the same is not within his purview in view of Section 409 (2) Cr.P.C.

3. Section 408 Cr.P.C. conferred power on Sessions Judge to withdraw and transfer any sessions case pending on the file of any other Court within his jurisdictional limits either on his own or on an application made by any of the parties. Section 409 Cr.P.C. conferred power of withdrawal of cases and appeals by Sessions Judges. Under clause (1), a Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him. Under clause (2) thereof, at any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, as Sessions Judge may recall any case or appeal which he has made over to any Additional

Sessions Judge. Under clause (3), where a Sessions Judge withdraws or recalls a case or appeal under sub-section (1) or sub-section (2) he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be. Thus, the power conferred under Section 409 Cr.P.C. is purely administrative and not a judicial power. To exercise power on judicial side, the Sessions Judge has to register the requisition of the petitioner as transfer petition and pass appropriate orders after affording reasonable opportunity. Instead of resorting to such procedure contemplated under Section 408 (1) Cr.P.C., the Sessions Judge resorted to the procedure under Section 409 (2) Cr.P.C. Hence, the Sessions Judge, Kadapa, Y.S.R. Kadapa District, is directed to register the requisition of the petitioner dated 17-07-2017 as transfer petition and pass appropriate orders after affording reasonable opportunity to both parties exercising power under Section 408 Cr.P.C.

4. With the above direction, the transfer criminal petition is disposed of at the stage of admission. Pending miscellaneous petitions, if any, in this petition shall stand closed in consequence.

Date: 21-12-2017.

JSK

M.SATYANARAYANA MURTHY, J.