

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR. CRIMINAL PETITION No.16 of 2018

ORDER:

This Transfer Criminal Petition under Section 407 Cr.P.C. is filed to withdraw SC No.27 of 2017 pending on the file of XIII Additional Special Sessions Judge, Narasaraopet, and transfer the same to IV Additional District Judge-cum-Special Judge for trial of offences under SCs and STs (POA) Act, Guntur, to try along with S.C.No.78/S/2017 on the ground that the incident took place in both the cases on 16.09.2014 at about 07.00 pm and basing on which, a case has been registered in Cr.No.97 of 2014 of Nadendla Police Station for the offences punishable under Sections 147, 148, 324, 326, 307 and 302 r/w 149 IPC against the petitioners herein and others.

After completion of investigation, the Police concerned filed charge sheet before Additional Junior Civil Judge, Chilakaluripet, who intum committed the same to the Sessions Division as the case is exclusively triable by the Sessions Division and later, the Principal Sessions Judge registered the same as S.C.No.27 of 2017 and made over to XIII Additional Special Sessions Judge, Narasaraopet, on point of jurisdiction and the same is pending before it for decision.

It is further contended that in the same incident, some of the petitioners herein have received severe injuries, admitted in Government Hospital, Guntur, where they gave statements to the police and basing on which, the police registered a case in Cr.No.99 of 2014 for the offences punishable under Section 147, 148, 323, 324, 435, 149 and Section 3 (i) (x) of SCs and STs (POA) Act, against 17 accused. However, the Nadendla Police did not complete the investigation in the above referred crime and the police ought to have registered the offence for the offence under Sections 307 and 326 IPC, but wantonly avoided to register the above said offences

and failed to complete the investigation. Further, the petitioners filed a private complaint and the same was registered as CFR No.1090 of 2015 for various offences including the offence punishable under Section 3 (i) (x) of SCs and STs (POA) Act. The Magistrate concerned, after following necessary formalities, took the case on file for the offences punishable under Sections 147, 148, 323, 324, 435, 149 and Section 3 (i) (x) of SCs and STs (POA) Act and registered the name as PRC No.07 of 2016 and thereafter committed the case to Sessions Division as it is exclusively triable by the Court of Session, which is registered as SC No.78/S/2017, and now it is pending for decision.

It is the contention of the petitioners that petitioner No. 13/ Accused No.13 in SC.No.27 of 2017 along with others, who are injured witnesses/ persons in the incident, are the *De facto* complainants in SC.No.78/S/2017. Similarly LWs. 4, 6 to 8, 13, 17 and 20 in SC.No.27/S/2017 pending on the file of XIII Additional Sessions Judge, Narasaraopet, are arrayed as Accused Nos. 12, 2, 8, 9, 3, 16 and 5 respectively in SC.No.78/S/2017 pending on the file of IV Additional Special Court, Guntur.

It is also their contention that if both the sessions cases are tried by different Courts, there is a possibility of conflicting judgments since both the cases arising out of the same incident and they are case and counter cases. To avoid conflicting judgments and to enable the Court to decide who are the aggressors, the Sessions case shall be withdrawn from XIII Additional Sessions Judge, Narasaraopet, and transfer to IV Additional District Judge-cum-Special Judge under SCs and STs (POA) Act, Guntur, where SC.No.78/S/2017 is pending.

The respondent No.2 opposed the petition on the ground that the complaint lodged with the police by the respondent is still pending and no final report was filed under Section 173 Cr.P.C. but the private complaint

filed by the petitioners herein was registered and the Magistrate concerned, after following necessary procedure, committed the case to the Sessions Division under SCs and STs Act along with other offences. Time and date of offence in both the case and the accused in S.C.No.27 of 2017 pending on the file of XIII Additional Sessions Judge, Narasaraopet, along with another injured in the incident, are the de facto complainants in S.C.No.78/S/2017 pending on the file of IV Addl. District Judge, Guntur. Since serious allegations are made against one another by the accused and witnesses in both the cases, which attract serious offences punishable under Sections 147, 148, 323, 324, 435, 149 and Section 3 (i) (x) of SCs and STs (POA) Act, to avoid conflicting judgments and to enable the Court to decide as to who are the aggressors, the Sessions case is to be withdrawn and transfer to IV Additional District Judge, Guntur, as contended by the learned counsel for the petitioners.

Whereas the learned Public Prosecutor for the State of Andhra Pradesh opposed the petition on the ground that the case cannot be transferred as there was no reference about the police report in the entire complaint and also about the incident, which is subject matter of S.C.No.27 of 2017. In the absence of such allegations, the Court cannot exercise power under Section 407 Cr.P.C. to withdraw and transfer the case from one Court to another and that too the Accused in S.C.No.27 of 2017 pending on the file of XIII Additional Sessions Judge, Narasaraopet, filed affidavit representing other accused and such affidavit is binding on the other accused and requested this Court to dismiss the petition or to pass appropriate order to withdraw S.C.No.27 of 2017 pending on the file of XIII Additional Sessions Judge, Narasaraopet and transfer to IV Additional District Judge-cum-Special Judge under SCs and STs (POA) Act, subject to bear the expenses for witnesses.

As seen from the material on record, the date and time of incident in both the cases are one and the same including the scene of offence. However, the Police of Nadendla completed the investigation in crime i.e., Cr.No.97 of 2014 and filed charge sheet, which is registered as S.C.No.27 of 2017 pending on the file of XIII Additional Sessions Judge, Narasaraopet, but, whereas the investigation in Cr.No.99 of 2014 where the petitioners are the complainants, is not yet completed though it is arising out of the same incident allegedly, for the reasons best known to the police. The petitioners having lost hope on the investigating agency, filed private complaint before the Magistrate having jurisdiction, who in turn took the case on file for the offences under Sections 147, 148, 323, 324, 435, 149 and Section 3 (i) (x) of SCs and STs (POA) Act, and committed the case to Sessions Division, after following the procedure contemplated under Section 309 Cr.P.C., and it is pending before the Special Court for trial of offences under SCs and STs (POA) Act, Guntur. When the date, time and scene of offence in both the crimes are one and the same, it is appropriate to withdraw one of the case and transfer the same to any other Court under the control of High Court. The Court of IV Additional District Judge is a designated Court for trial of offences under SCs and STs (POA) Act and hence the Sessions case pending before it cannot be withdrawn and transferred to any other Court within the District. But, the case pending before XIII Additional Sessions Judge, Narasaraopet, can be withdrawn by exercising power under Section 407 Cr.P.C. to avoid conflicting judgments and to enable the Court to decide who are the aggressors in two cases.

In similar circumstances, in *Vijay Kumar v State of Maharashtra*¹, the Apex Court held that when case and counter case are pending in two different Courts, they shall be tried by one Court to avoid conflicting decisions.

¹ III (2006) CCR 395(DB)

Similarly, the Apex Court in *State of M.P. v Mishrilal (dead) and others*², held that the cross cases should be tried together by the same Court irrespective of the nature of offence involved and the rational behind this, is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two Courts separately, there is likelihood of conflicting judgments. Similar view is expressed by the Division Bench of this Court in *Adapa Gangadhara Ramarao @Gangadhar and others v State of A.P.*,³, wherein it was held when there are case and counter case, both must be tried and must be disposed of simultaneously by one and the same Judge and must be disposed of simultaneously, otherwise, it is not possible to arrive at a definite conclusion as to genesis of incident and also to fix up the aggressors.

By applying the principles laid down in the above referred judgments, I find that it is a fit case to exercise power under Section 407 Cr.P.C to withdraw S.C.No.27 of 2017 pending on the file of XIII Additional Special Sessions Judge, Narasaraopet and transfer the same to IV Additional District Judge-cum-Special Judge for trial of cases under SCs and STs (POA) Act, to avoid conflicting judgments and to enable the Court to decide who are the aggressors.

Accordingly, this Transfer Criminal Petition is allowed withdrawing SC No.27 of 2017 pending on the file of XIII Additional Special Sessions Judge, Narasaraopet, and transferred the same to IV Additional District Judge-cum-Special Judge for trial of cases under SCs and STs (POA) Act. On receipt of record from XIII Additional Special Sessions Judge, Narasaraopet, IV Additional District Judge-cum-Special Judge for trial of offences under SCs and STs (POA) Act, is directed to dispose of both the cases i.e., SC No.27 of 2017 and S.C.No.78/S/2017 within a period of six months from the

² 2003 Cr.L.J, 2312

³ LC 2010 (11) AP 96

date of receipt of a record in SC.No.27 of 2017 pending on the file of XIII Additional Special Sessions Court, Narasaraopet.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY,J

Dt: 04-07-2018
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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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