

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Transfer Criminal Petition No.20 of 2018

ORDER:

The petitioner is the sole accused, respondent No.1 is the *de facto* complainant and respondent No.2 is the State, represented by the Public Prosecutor, in S.C.No.98 of 2011 on the file of the learned Assistant Sessions Judge, Karimnagar, which is outcome of Crime No.155 of 2010 registered by the Station House Officer, Karimnagar II Town Police Station [P.R.C. No.79 of 2010 on the file of the learned Judicial First Class Magistrate, Karimnagar] where taken cognizance in committing the case to the Court of Sessions for the offences punishable under Sections 376, 420 & 493 IPC. After committal of the case, the Sessions Division took the case on file under Section 193 Cr.P.C. and allotted Sessions Case number, which is pending before the Principal Sessions Judge. There the petitioner filed C.F. No.2653 of 2017 under Sections 408 & 409 Cr.P.C. in seeking to transfer the case back to the Magistrate Court. It is for the reason another Bench of this Court in CrI.R.C. No.1604 of 2011 by order dated 12.10.2017 set aside the order of cognizance taken only to the extent covered by the offence under Section 376 IPC. No doubt, it is not clarified of the other offences since triable by the Magistrate, to remit the case to the Court of the Magistrate concerned. It is the observation with which the petition was for transfer sought by the petitioner-accused dismissed vide impugned order passed by the learned Sessions Judge, though the learned Sessions Judge heard and framed the charges now pending for trial for the offences punishable under Sections 493 & 420 IPC.

2. The learned counsel for respondent No.1-*de facto* complainant supported the impugned order, so also the learned Public Prosecutor.

3. Heard both sides and perused the material on record.

4. In fact, from the hearing once that is not be all and end all, particularly from Section 228 Cr.P.C. is very clear that the Sessions Judge, from the hearing of the prosecution contemplated by Section 226 Cr.P.C. on opening of the case by the Public Prosecutor and if not discharged under Section 227 Cr.P.C. to frame charge under Section 228 Cr.P.C. At that stage the Sessions Judge has to consider if the case not triable by the Magistrate and exclusively triable by the Court of Sessions, retain and if triable by the Magistrate, to send back to the Magistrate Court concerned. At that stage does not mean at the time of framing charges but even later before commencement of trial to exercise the power specifically conferred by Section 228 Cr.P.C. supra.

5. Having regard to the above, once the cognizance taken for the offence punishable under Section 376 IPC is quashed by another bench of this Court referred supra and there remained the offences punishable under Sections 493 & 420 IPC, which are triable by the Magistrate, the learned Sessions Judge has to send back the case to the Magistrate Court concerned for trial.

Accordingly and in the result, this Transfer Criminal Petition is disposed of requiring the learned Sessions Judge to send back the case to the committal Magistrate who has to conduct trial from charges framed

and if not framed, hear and if not discharged to frame charge and put the accused to trial.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

12.11.2018
MVA

