

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR. CRIMINAL PETITION No.82 of 2018

ORDER:

This Transfer Criminal Petition under Section 407 Cr.P.C. is filed to withdraw SC No.296 of 2012 pending on the file of II Additional District and Sessions Court, Vijayawada and transfer the same to the Court of Sessions Judge, Krishna Division at Machilipatnam, on the ground that the offence took place within the jurisdiction of Challapalli Police Station, which comes within the jurisdictional limits of Sessions Court at Machilipatnam, but the investigation was transferred to CID, which in turn filed charge sheet, after completion of investigation, before III Additional Chief Metropolitan Magistrate, Vijayawada-cum-Designated Court for trial of cases filed by CID for the entire Krishna District, but the Magistrate concerned committed the case to II Additional District and Sessions Judge-cum-Metropolitan Sessions Judge, Vijayawada though the offence took place within the jurisdictional limits of Sessions Court at Machilipatnam.

After committing the case, summons were issued and on their appearance, the Court concerned framed charges against these petitioners for various offences and the schedule is fixed for trial of the case. At this stage, the petitioners sought for withdrawal of the case from II Additional District and Sessions Judge, Vijayawada and transfer the same to the jurisdictional Sessions Court at Machilipatnam, Krishna District.

State of Andhra Pradesh filed counter contending that the investigation was transferred to CID on 17.10.2011 though the offence committed within the jurisdiction limits of Challapalli area and III Additional Chief Metropolitan Magistrate Court is a Special Court for trial of cases filed by the CID. The police after investigation filed charge sheet before the Special Court, which in turn committed the case to II Additional District and

Sessions Court-cum-Metropolitan Sessions Court, Vijayawada, which is also competent to try the case. The petitioners did not raise any jurisdictional aspect before framing of charges. Since the petitioners did not raise any jurisdictional issue before framing of charges, this plea cannot be raised at a later stage and that too the trial is commenced and it is at the stage of cross examination of PW.1 and therefore, this Court cannot exercise power under Section 407 Cr.P.C., and requested this Court to dismiss the petition.

During hearing, learned counsel for the petitioners reiterated the contentions urged in the petition while disputing the stage of trial and drawn the attention of this Court to the downloaded copy of case details relating to SC.No.296 of 2012 to show the stage of trial and other particulars. Basing on the information furnished to this Court, the trial is not yet commenced. Whereas, the learned Public Prosecution again opposed the petition on the ground that the trial is already commenced and it is coming up for cross examination of PW.1 and since no objection was raised before framing of charges, the petitioners are not entitled to raise this issue at a later stage and that too after framing of charges and requested this Court to dismiss the petition.

It is an undisputed fact that the offence took place within the limits of Challapalli Police Station and within the territorial jurisdiction of Sessions Division at Machilipatnam, Krishna District. But, because of transfer of investigation to the CID on 17.10.2011, the CID filed charge sheet before III Additional Chief Metropolitan Magistrate, Vijayawada, which is a designated Court for trial of cases filed by the CID for the entire district of Krishna, but the III Addl. Metropolitan Magistrate, instead of committing the case to the Sessions Division at Machilipatnam, since it pertains to Challapalli, which is within the jurisdictional limits of Sessions Judge at Machilipatnam, Krishna District, committed the case to II Additional District and Sessions Court, Vijayawada and the II Additional District and Sessions

Judge also proceeded further and framed charges. According to prosecution, it is at the stage of cross examination of Pw.1. But, according to the petitioners, the trial is not yet commenced. Irrespective of the stage of the trial in Sessions Court, this Court can exercise power under Section 407 Cr.P.C., and bar to withdraw and transfer the case after framing charges is only to exercise to power under Section 407 Cr.P.C. on administrative side, but when the Court exercise power under Section 407 Cr.P.C. on judicial side, this Court can exercise power under Section 407 Cr.P.C. to withdraw and transfer the case to the competent Court having jurisdiction i.e., the District and Sessions Judge at Machilipatnam. All the witnesses are from Challapalli and taking into consideration of convenience of accused and prosecution witnesses, I find that it is a fit case to withdraw SC.No.296 of 2012 pending on the file of II Additional District and Sessions Judge, Vijaywada and transfer the same to the Sessions Judge, Krishna District at Machilipatnam.

Accordingly, this Transfer Criminal Petition is allowed withdrawing SC No.296 of 2012 pending on the file of II Additional District and Sessions Court at Vijayawada, and transfer the same to the Sessions Judge, Krishna District at Machilipatnam.

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

M. SATYANARAYANA MURTHY, J

Dt: 04-07-2018
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