

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.Crl.P. No.95 OF 2018

ORDER:

This transfer criminal petition is filed under Section 407 Cr.P.C. to withdraw S.C.No.390 of 2013, pending on the file of XII Additional Sessions Judge, Pithapuram, East Godavari District and transfer the same to any other competent Court.

The petitioner is the *de facto* complainant, who is listed witness No.1 in the charge sheet, filed this petition on the ground that the Assistant Public Prosecutor, who is close associate with the sitting MLA and thereby the petitioner is apprehending that he will not get fair justice if the prosecution is conducted by the present Assistant Public Prosecutor in the XII Additional Sessions Judge, Pithapuram and requested to withdraw and transfer S.C.No.390 of 2013 to any other competent Court.

The 1st respondent filed counter denying the material allegations mainly raising the contention that most of the witnesses are from Pithapuram only and in case Sessions Case is transferred to any other Court, it is inconvenient to all the witnesses to be examined in the Sessions Case.

During hearing, learned counsel for the petitioner drawn the attention of this Court to substantiate his contention about the movements of the Assistant Public Prosecutor along with the sitting MLA. Therefore, the alleged apprehension is substantiated by material produced before the Court. He also contended that in case Sessions Case is withdrawn and transferred to any other Court within the District, no prejudice would be caused to the parties and therefore, to do substantial justice to both parties, it is appropriate

to withdraw and transfer S.C.No.390 of 2013 to any other Court within the District.

Whereas learned Additional Public Prosecution opposed the petition on the ground that the parties can approach the Sessions Court for appointment of Special Public Prosecutor for conducting trial of the Sessions Case. But without making any such request, the petitioner cannot approach this Court raising contention that he will not get fair and substantial justice, in case the prosecution is conducted by the present Assistant Public Prosecutor and requested to dismiss the petition.

Whereas learned counsel for respondents 2 to 7 contended that the Court can appoint Special Public Prosecutor for conducting trial of the case and placed reliance of the Apex Court in **Harita Sunil Parab v State of NCT of Delhi and others**¹ and on the basis of the law declared by the Apex Court, he requested to dismiss the petition while permitting the petitioner to approach the Government or Sessions Court where the case is pending to appoint Special Public Prosecutor and that the convenience of the parties must be taken into consideration.

Section 407 Cr.P.C. speaks jurisdiction of this Court to withdraw and transfer cases and appeals within its jurisdictional limits of any of the Courts enumerated therein. Here the main apprehension of the petitioner is that he will not get fair and substantial justice if the prosecution is conducted by the present Assistant Public Prosecutor, who is moving with the sitting MLA of Pithapuram constituency and the accused and that it can be seen from the photos produced before the Court. Thus, there is

¹ 2018(1) ALD (CrI)771 (SC)

substantial material in support of the reasonable apprehension of the petitioner which would form a ground for exercising power under Section 407 Cr.P.C. to withdraw and transfer the Sessions Case to any other Court.

Merely because, the petitioner expressed an apprehension that he will not get fair and substantial justice which is not a ground to withdraw and transfer Sessions Case, but if such allegation is substantiated by any material, this Court can exercise jurisdiction under Section 407 Cr.P.C. Here, the petitioner substantiated his apprehension by producing material before this Court.

As per the submission of learned Additional Public Prosecutor, the petitioner has right to seek appointment of Special Public Prosecutor, but it will take months to appoint Special Public Prosecutor that too the Sessions case is of the year 2013, disposal of it will be delayed further and it is difficult for the presiding officer to decide the Sessions Case at the earliest and also difficult for him to follow the guidelines issued by this Court for disposal of pre 2012-13 matters. Instead of following the procedure for appointment of Special Prosecutor, it is convenient to withdraw and transfer Sessions Case to any other Court, so as to enable the parties to get the case disposed of early and to avoid further delay. Therefore, failure to approach the Sessions Court or the Government for appointment of the Special Public Prosecutor is not a ground to negate the relief under Section 407 Cr.P.C. to the petitioner.

Learned counsel for respondents 2 to 7 submitted that the convenience of the parties alone is the consideration to exercise power under Section 407 Cr.P.C. and placed reliance of the Apex

Court in **Harita Sunil Parab's** case referred supra, wherein at para 8, it was held that the convenience of the parties does not mean the convenience of the petitioner alone who approaches the Court on misconceived notions of apprehension and convenience for the purposes of transfer means the convenience of the prosecution, other accused, witnesses and the larger interest of the society. Inconvenience that may be caused to the petitioner for pursuing her case before the competent Court at Delhi affecting her professional engagements at Mumbai and requiring her to travel to Delhi and may be one of relevant considerations. But cannot override all other considerations such as availability of witnesses exclusively at original place, making it virtually impossible to continue with trial at place of transfer and progress of which would naturally be impeded for that reason at transferred of trial.

Even if the above principle is applied to the present facts of the case, out of 51 listed witnesses, 13 witnesses, including the accused and the *de facto* complainant belonging to the same village within the jurisdictional limits of the Inspector of Police, Pithapuram were examined. It is not the case of the inconvenience, but it is the case of apprehension that the petitioner will not get fair and substantial justice. However, hardly, the distance between Kakinada and Pithapuram is 30 km and one can cover the distance between Kakinada to Pithapuram, within half an hour and it would be convenient to both the parties to the present petition. Therefore, based on inconvenience of the witnesses, the Court cannot deny the relief under Section 407 Cr.P.C., in view of the apprehension of the petitioner that he will not get substantial and fair justice, which is

substantiated by material. Therefore, I find that no substance in the contention of respondents 2 to 7.

In view of the apprehension of the petitioner that he will not get substantial and fair justice, if the prosecution is conducted by the present Assistant Public Prosecutor, who is closely moving with the sitting MLA of the Pithapuram constituency and the accused, which is supported by material, the transfer criminal petition is liable to be allowed.

Accordingly, the transfer criminal petition is allowed and S.C.No.390 of 2013, pending on the file of XII Additional Sessions Judge, Pithapuram, East Godavari District is withdrawn and transferred to the file of III Additional District and Sessions Judge, Kakinada for trial and disposal in accordance with law.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

12.06.2018
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A large, faint, circular watermark seal of the High Court of Andhra Pradesh, Hyderabad Bench, is centered on the page. The seal features the text 'HIGH COURT OF ANDHRA PRADESH' and 'HYDERABAD' around the perimeter, with 'JUDICATURE' at the top. In the center is the Ashoka Lion Capital. Below the seal, the signature 'M.SATYANARAYANA MURTHY,J' is printed in bold black text.

M.SATYANARAYANA MURTHY,J