

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.CRL.P.No.119 OF 2018

Tr.CRL.P.No.120 OF 2018

AND

Tr.CRL.P.No.133 OF 2018

COMMON ORDER:

Transfer Criminal Petition No.119 of 2018 is filed under Section 407 Cr.P.C with a request to withdraw S.C.No.131 of 2018 pending on the file of Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Ananthapuram District and transfer the same to any Court within the jurisdiction of Prakasam District to try along with C.C.Nos.9 and 11 of 2016.

Transfer Criminal Petition No.120 of 2018 is filed under Section 407 Cr.P.C with a request to withdraw S.C.No.132 of 2018 pending on the file of Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Ananthapuram District and transfer the same to any Court within the jurisdiction of Prakasam District to try along with C.C.Nos.9 and 11 of 2016.

Transfer Criminal Petition No.133 of 2018 is filed under Section 407 Cr.P.C with a request to withdraw S.C.No.133 of 2018 pending on the file of Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Ananthapuram District and transfer the same to any Court within the jurisdiction of Prakasam District to try along with C.C.Nos.9 and 11 of 2016.

The petitioner/A15 sought transfer of these three cases to any Court within the jurisdiction of Prakasam District as there are other cases pending

It is contended that the petitioner/A15 and the respondents/A1 to A14 and A16 to A22 are one and the same in all the cases pending before the different Courts and the offences allegedly committed by them also one

and the same in all the cases. It is also contended that the petitioner is facing much difficulty, as different cases are pending in different Districts and that the Courts are posting the cases on the same dates. Therefore, it is impossible for the petitioner to appear before different Courts in 25 crimes pending against him at different districts. It is finally contended that since the charge sheet arising out of the same transaction, but in different districts, to avoid conflicting judgements, it is appropriate to withdraw Sessions cases pending on the file Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Ananthapuram District and transfer to the Court of Principal District and Sessions Judge, Ongole.

Learned Public Prosecutor opposed the petitions on the ground that it is difficult for the prosecution to produce the witnesses from different districts before the Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Ongole and the Investigating Officer is different though Investigating Agency is one and the same and requested to dismiss the petitions.

As seen from the allegations made in the charge sheet and the cases pending before the Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Ananthapuram District and in C.C.Nos.9 and 11 of 2016 pending on the file of Principal District and Sessions Judge-cum-Special Judge for trial of Cases under A.P. Protection of Depositors of Financial Establishment Act, they are arising out of the same incident and the various crimes were registered against them and charge sheets are filed for the identical offence based on different complaints. The witnesses though different in all the three cases pending before the Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Ananthapuram District and in two cases C.C.Nos.9 and 11 of 2016 are pending before the

Court at Ongole. It is impossible for the petitioner to appear before the Courts in both Districts at a time on one and the same day. Moreover, another 20 crimes are pending for investigation and charge sheets are yet to be filed in different districts. Out of 25 cases, 9 cases were registered at Guntur District, 8 cases were registered at Kurnool District and two cases at West Godavari District, one case at Krishna District and one case at Visakhapatnam. Thus, the accused are facing same charges in all 25 cases, but in different districts. If all the cases are being tried by the Special Judge designated under the Act in various districts there is likelihood of conflicting judgments.

Section 407 Cr.P.C. conferred power on this Court to withdraw and transfer. Section 407 Cr.P.C. deals with power of this Court to transfer cases and appeals. Section 407(c) Cr.P.C. says that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice the Court may withdraw and transfer any case pending in the Subordinate Courts under its control. Section 407(1) (c)(ii) says that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction. At the same time, Section 407(2) says that the High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative withdraw and transfer to try along with C.C.Nos.9 and 11 of 2016..

Here the present cases would fall within Section 407(1)(c) and (2) Cr.P.C as all the cases are class by itself and in case, these cases are not withdrawn and transferred, there is likelihood of conflicting judgments, if they are decided by different Courts. The identical question came up before the Apex Court in **Ranbir Yadav v State of Bihar**¹ the Apex Court

¹ (1995) 4 SCC 392

has taken into consideration of the administrative power of the High Court under Article 227 of the Constitution to transfer a case after commencement of trial on the ground of administrative exigency without prejudicially affecting the rights of the parties. While approving the same, the Court has finally concluded that the order is not without jurisdiction and held as follows:

*“It goes without saying that in many authoritative pronouncements Supreme Court has also held that accused is entitled for a fair and speedy trial being his fundamental right. Therefore, in the considered opinion of this Court, transferring a case from one district to another, may in a given case, cause inconvenience to the accused person or at times adversely affect his rights to defend his cause effectively. The principles of natural justice enshrined in the maxim audi alteram partem cannot be given go-bye while considering an application for transfer of the case. Cumulative reading of Section 407 Cr.P.C. and its purposeful construction also makes it crystal clear that it is bounden duty of the Court to ensure a fair and impartial inquiry or a trial in any criminal Court subordinate to it. My aforesaid view is also fortified by a judgment of the Apex Court in **Nirmal Singh v State of Haryana**².*

In **State of Rajasthan v Manjeet Singh** (Criminal Writs (CRLW) No.31 of 2016, Rajasthan High Court held that there remains no quarrel that the High Court can exercise power of superintendence under Article 227 of the Constitution over all Courts and Tribunals subordinates to it and in appropriate cases may exercise administrative power to transfer cases from one district to another to meet administrative exigency. However, in the present case, the endeavour of the State is to seek judicial intervention of the Court for seeking transfer of cases from one district to another and for which undeniably necessary compliance with all the procedural formalities envisaged under Section 407 Cr.P.C. is pre-requisite besides

² AIR 1996 SC 2759

providing adequate opportunities to the parties of a proper hearing. Therefore, the ratio decidendi of the verdict cannot render any assistance to the cause of the petitioner, rather the verdict mandates that judicial order of transferring case from one district to another is not permissible de hors the provisions of Section 407 Cr.P.C.

In **Mohd. Sahabuddin v State of Bihar and others**³ the Apex Court exercising power of transfer and changed seat of Court. But in **G.X. Francis and others v Banke Bihari Singh and another**⁴ the Apex Court held that where public confidence in the fairness of the trial is likely to be seriously undermined under the circumstances of the case, transfer petition could be allowed. In **Nirmal Singh v State of Haryana**⁵ the Apex Court held that consistent view of the Court is that the public interest is involved and the convenience of the parties is also one of the considerations to be taken while exercising power under Section 407 Cr.P.C. When all the cases registered against the petitioners are class by itself under the same enactment and the Court can exercise such power under Section 407 (1)(c)(ii)Cr.P.C. Therefore, in view of the facts and circumstances of the case including the inconvenience and nature of offence allegedly committed by the petitioner, I deem it appropriate to exercise power under Section 407 Cr.P.C.

In the result, the transfer criminal petition is allowed. S.C.Nos.131, 132 and 133 of 2018 pending on the file of Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Ananthapuram District and C.C.Nos.9 and 11 of 2016 pending on the file of Principal District Judge-cum-Special Judge for A.P Protection of Depositors of Financial Establishment Act, Ongole are withdrawn and

³ (2010) 4 SCC 653

⁴ AIR 1958 SC 309

⁵ AIR 1996 SC 2759

transferred to the Court of Principal District Judge-cum-Special Judge for AP Protection of Depositors of Financial Establishment Act, Guntur, Guntur District, where nine charge sheets are yet to be filed to decide all the cases in accordance with law.

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

M.SATYANARAYANA MURTHY,J

06.08.2018
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