

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.135 OF 2018

ORDER:

This transfer criminal petition, under Section 407 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to withdraw C.C.No.159 of 2017 from the Court of Judicial Magistrate of First Class, Gajapathinagaram, Vizianagaram District and transfer the same to any competent court at Visakhapatnam.

It is the contention of the petitioners that the first petitioner is a resident of Venkayyapalem Village, Vizianagaram District and the second petitioner is an Advocate by profession, practicing at Kothavalasa, Vizianagaram District. While C.C.No.480 of 2015 is pending before the Judicial Magistrate of First Class, Kothavalasa, for the offence punishable under Sections 509 and 506 read with 34 of I.P.C., the Sessions Judge at Vizianagaram District, withdrawn the said C.C. and transferred the same to Gajapathinagaram, without any prior notice to the petitioners, wherein it was renumbered as C.C. No.159 of 2017. It is further contended that when the petitioners appeared before the Magistrate at Gajapathi Nagaram, the learned Magistrate insisted them to sign on blank papers, but they refused to do so, then the Presiding Officer of the Court posed some comments against the petitioners that he will see in future, therefore, the petitioners apprehending that that they will not get any fair trial, and requested to withdraw C.C. No.159 of 2017 from the Court of Judicial Magistrate of First Class, Gajapathinagaram and transfer the same to any competent court at Visakhapatnam.

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During hearing, learned counsel for the petitioners reiterated the contentions while expressing the apprehension of the petitioners.

However, the Public Prosecutor for the State (A.P.) reported no objection for withdrawal of C.C. No.159 of 2017 and transfer the same to any competent court within Vizianagaram District.

The apprehension of the petitioners, though not based on material, however, there is a reason for such apprehension and that too, the case is originally pending before the Judicial Magistrate of First Class, Kothavalasasa, having territorial jurisdiction to try the case, but the learned Sessions Judge exercising power under Section 408 Cr.P.C. transferred to the Court at Gajapathinagaram, without any notice to the petitioners, as contended by the counsel for the petitioners.

The Sessions Judge can exercise such power under Section 408 Cr.P.C., but notice is required to be issued.

However, the Court at Gajapathinagaram is far away to the place where the petitioners residing, which is within the territorial jurisdiction of Judicial Magistrate of First Class, Kothavalasa, and if it is withdrawn and transferred to the Court at Srungavarapukota, atleast apprehension in the mind of the petitioners can be wiped.

Therefore, recording the submission of the public prosecutor that he has no objection, C.C. No.159 of 2017 pending before the Judicial Magistrate of First Class, Gajapathinagaram, Vizianagaram District, is withdrawn and transferred to the Judicial Magistrate of First Class, Srungavarapukota, Visakhapatnam.

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Accordingly, the transfer criminal petition is allowed. No costs.

Miscellaneous petitions, if any, pending in this transfer criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:27.06.2018

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