

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Transfer Criminal Petition No.155 of 2018

ORDER:

In this Transfer Criminal Petition filed under Section 407 Cr.P.C., the petitioner/A1 challenges the order dated 03.07.2018 in Tr.Crl.M.P.No.80 of 2018 passed by learned Sessions Judge, Krishna at Machilipatnam, dismissing the transfer application filed by A1 to transfer Sessions Case No.339 of 2013 from the file of VI Additional Sessions Judge Court, Machilipatnam to any other Sessions Judge Court at Machilipatnam.

2) In S.C.No.339 of 2013, the petitioner and 5 others are facing charges under Sections 120B and 302 r/w 34 IPC for allegedly causing murder of one Gandham Venkateshwar Rao due to disputes between the petitioner/A1 and deceased in connection with money transactions, real estate affairs and other issues.

3) While so, as the petitioner/A1 was Under Trial Prisoner, the trial Court completed the trial and when the matter was in the stage of arguments, the petitioner filed Tr.Crl.M.P.No.80 of 2018 before the Sessions Judge, Machilipatnam seeking transfer of S.C.No.339 of 2013 from the file of VI Additional Sessions Judge Court, Machilipatnam to any other Session Judge Court at Machilipatnam on different grounds and the Sessions Judge under an elaborate order dismissed the said petition.

Hence, the instant petition.

4) Heard arguments of Sri Challa Ajay Kumar, learned counsel for petitioner and Sri Posani Venkateshwarlu, learned Public Prosecutor.

5) Tr.CrI.M.P.No.80 of 2018 was filed by the petitioner/A1 before the Sessions Judge, Krishna at Machilipatnam on the following main grounds.

(i) Right from the beginning of the case, the trial Judge was prejudicial towards the petitioner and he used to express his displeasure openly and some times he used to chastise the petitioner.

(ii) The trial Judge used to proclaim that the petitioner committed theft of original record in S.C.No.339 of 2013.

(iii) The Trial Court was totally prejudicial to the petitioner on the ground that the petitioner threatened the victim and eye-witnesses over phone due to which a case in Cr.No.44 of 2017 of Chilakalapudi PS was registered on the complainant of one Gandham Vijay Lakshmi, the wife of deceased and *de-facto* complainant in S.C.No.339 of 2013. Though on that ground the prosecution applied for cancellation of the bail granted to petitioner/A1 vide CrI.M.P.No.125 of 2017, however for the reasons best known to the prosecution the same was withdrawn.

(iv) The prejudicial attitude of the trial Judge was evident from the order in CrI.M.P.No.70 of 2018 whereunder the bail application of petitioner/A1 in S.C.No.339 of 2013 was dismissed. The observation in para-14 of the order that the Court could not commence the trial because of the dilatory attitude of the accused was not correct. The counsel for petitioner/A1 had a pre-arranged pilgrimage to Varanasi which was scheduled three months prior to the schedule given by the Court and hence he requested the Court to postpone the schedule to July, 2017 to a date of choice of the Court. However, the trial Court did not incline to change the schedule and in those circumstances, having no other go the counsel for petitioner has withdrawn his memo of appearance and went to Varanasi as per his schedule. Later, the counsel came to know that schedule was cancelled and due to persistent requests from elders and wife of A1, finally he agreed to represent A1 and again filed memo of appearance for A1 on 25.09.2017 and cooperated with the Court. Therefore, there were no *mala fides* on the part of petitioner/A1.

(v) The observations of the trial Court in para-16 of its order to the effect that there is a threat to the lives of witnesses and son of the deceased is absolutely baseless and shows the biased attitude of the trial Court.

6) Reiterating the above grounds, learned counsel for petitioner, in vehemence argued that the learned Sessions Judge grossly erred in not considering the genuineness of the apprehension of petitioner/A1 that

fair and impartial trial and justice cannot be rendered to him and committed a grave error in dismissing the petition. He placed reliance on the following judgments.

1. Satish Jaggi vs. State of Chhattisgarh¹

2. U.Karuna vs. Adapa Subrahmanyam²

3. Himanshu Singh Sabharwal v. State of M.P.³

7) Learned Public Prosecutor opposed the petition.

8) The point for determination is:

“Whether there are merits in this petition to allow?”

9) **POINT**: For a Judge, criminal trial is not a cake walk but a ropewalk in a circus. Like a performer in circus who holds three objects one each in his hands and the other on his head and walk to the other end of the rope, a trial Judge should also be able to make a delicate balance of the three forces i.e. victim, State represented by Prosecutor and of course, the accused and make an Odyssey in quest of absolute truth. Loss of balance may result in damage to any one or all the three conflicting interests and turn fair trial into foul trial and vitiate the ultimate judgment. If the end point to which the trial is heading is not the desired goal to the liking of one of the stake holders, some times he may try to scuttle the progress of trial by hook or crook. Some times the judge who lacks piousness may tilt too much

¹ 2007(1) ALD (CrI.) 748 (SC)

² 2006 (2) ALD (CrI.) 127 (AP)

³ 2008 (3) ALT (CrI.) 183 (SC)

towards one side giving scope to others to comment about breach of fair trial.

10) In the instant case, the petitioner/A1 makes imputation against the learned trial Judge showing certain instances which of course were turned down in transfer application filed by the petitioner. Therefore, it has now to be seen, whether there is any substance in the allegations.

11) I have carefully gone through the record to find out the truth in the allegations made by the petitioner. It is pertinent to note that till the end of the trial and the matter reached to the stage of arguments, the petitioner has not made a whisper of allegation that fair trial was a casualty in the hands of trial Judge. As rightly pointed out by the learned Public Prosecutor, it was only after the bail application in CrI.M.P.No.70 of 2018 was dismissed by the trial Judge, he moved the transfer application before the Sessions Judge which was ultimately turned down. In this back drop, the veracity of the allegations has to be scrutinized.

12a) The first allegation that since inception the trial Judge was expressing displeasure over the accused is a general allegation which was of course denied by the trial Judge in his remarks submitted to Sessions Judge. Hence, it does not require any elaboration.

b) The second and most important allegation is that the trial Judge openly blurted out against the petitioner/A1 as if he committed theft of

original record pertaining to the present case. It is to be noted that the record pertaining to S.C.No.339 of 2013 was found missing and in that connection on the report given by the Superintendent of the Court a case in Cr.No.156 of 2014 of Chilakalapudi PS was registered and it appears charge sheet is not yet filed. This allegation was totally denied by the trial Judge in his remarks. In this context, it is pertinent to mention the observation of the learned trial Judge in his order dated 03.03.2018 in Crl.M.P.No.70 of 2018 filed by the petitioner/A1 seeking bail. The learned Judge observed thus:

“On the report given by Superintendent, it can be seen that a crime is registered as Cr.No.156 of 2014 of Chilakalapudi Police Station. Basing on the registration of the said crime and in absence of the filing of the charge sheet, it is difficult to accept that the said record was stolen away the entire court record in S.C.No.339 of 2013 by the petitioner/A1.

So, his categorical observation is that in the absence of filing of charge sheet, basing on the registration of crime alone, it cannot be held that the record was stolen away by the petitioner/A1. He ultimately dismissed the bail application on other grounds but not on the ground that A1 had stolen the record. Therefore, it is difficult to believe that the trial Judge has proclaimed as if the petitioner/A1 had stolen the record. Therefore, this allegation has no legs to stand.

c) The third allegation that the trial Court was totally prejudicial towards the petitioner/A1 as if he was threatening the witnesses and victim is also not correct. Admittedly, the wife of deceased lodged a

report against the petitioner/A1 alleging that he was threatening them with dire consequences over telephone on which the police of Chilakalapudi registered a case in Cr.No.44 of 2017. It appears the Additional Public Prosecutor opposed the bail showing it as one of the grounds. In that context, in para-16 of the order the trial Judge observed thus:

“In view of the submissions made by the learned Additional Public Prosecutor with regard to the threat to the lives of the witnesses and the son of the deceased, instead of granting bail to the accused, I find that it is a fit case to dispose of the Sessions Case itself as the matter stands posted for arguments and both parties have expressed their willingness to cooperate with the Court for early disposal.”

The above observation cannot be construed as if the trial Court opined that petitioner/A1 indeed offered threats. On the other hand, quoting the submission made by Additional Public Prosecutor, the trial Court preferred to dispose of the case as it was in the stage of arguments in stead of granting bail. Therefore, the above observation of the trial Court cannot be inferred as prejudicial or hostile attitude towards him.

d) The other allegations made in the transfer application are not worthy of consideration.

13) At the outset, the impugned order of the Sessions Judge is neither illegal nor perverse, warranting interference. The judgments

relied upon by the learned counsel for petitioner do not advance his cause.

14) In the result, this Transfer Criminal Petition is dismissed.

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

U.DURGA PRASAD RAO, J

Date: 12.07.2018
Murthy

