

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.Crl.P.No.173 OF 2018

ORDER:

This petition is filed under Section 407 of Criminal Procedure Code (for short "Cr.P.C.") to withdraw C.C.No.70 of 2017 pending on the file of the IV Special Magistrate, Visakhapatnam and transfer the same to V Special Magistrate - cum - IV Additional Junior Civil Judge, Visakhapatnam or any other Court having territorial jurisdiction on the ground that the petitioner is accused in other C.C.Nos.80 of 2017, 4 of 2017, 36 of 2017, 37 of 2018 and 364 of 2018 pending on the file of V Special Magistrate - cum - IV Additional Junior Civil Judge, Visakhapatnam for the offence punishable under Section 138 of Negotiable Instruments Act and some important documents are filed in the said cases and that the petitioner required those documents for cross-examination of witnesses and to defend himself in C.C.No.70 of 2017 pending on the file of IV Special Magistrate, Visakhapatnam.

Learned counsel for the petitioner contended that the learned IV Special Magistrate adjourning the C.C.No.70 to 2017 from day to day even without giving any time though he brought to the notice of the Court that connected cases are pending in other Courts and he as to take alternative steps, in those circumstances he filed Transfer Crl.M.P.No.948 of 2018 before the Metropolitan Sessions Judge, but the same was dismissed on 22.06.2018. Therefore, the present petition is filed.

The respondent No.2 filed detailed counter opposing the petition.

The main reason for seeking withdrawal and transfer of C.C.No.70 of 2017 pending on the file of IV Special Magistrate,

Visakhapatnam is that the petitioner is also accused in other cases (referred supra) and some important documents relating to C.C.No.70 of 2017 were filed in other cases and he required those documents to cross-examine the witnesses in C.C.No.70 of 2017. But this Court cannot directly exercise power under Section 407 of Cr.P.C. to club all the cases and try jointly since the power under Section 407 of Cr.P.C. is limited for withdrawal and for transfer and not for issuing any direction to club one case with other cases. Even if C.C.No.70 of 2017 is withdrawn from the Court of IV Special Magistrate, Visakhapatnam and transferred to V Special Magistrate Court, Visakhapatnam, the petitioner cannot straightaway transfer documents from one case to other case and he is required to obtain certified copies and substitute those copies to take return and file in C.C.No.70 of 2017 or summon documents from the Court concerned. Instead of following procedure, the petitioner filed the present petition seeking relief of withdrawal and transfer of C.C.No.70 of 2017. Even if C.C.No.70 of 2017 is withdrawn from the Court of IV Special Magistrate, Visakhapatnam and transferred to other Court, no purpose would be served. Consequently, the petition is liable to be dismissed.

In the result, the transfer criminal petition is dismissed. However, the petitioner is at liberty to summon documents from the Court concerned if he finds that those documents are necessary for marking in C.C.No.70 of 2017 by following necessary procedure. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

11.09.2018
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