

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.179 OF 2018

ORDER:

This Transfer Criminal Petition, under Section 407 of the Code of Criminal Procedure, is filed by the Petitioners/A-6 to A-8 to withdraw C.C. No.3 of 2017 pending on the file of Principal District Judge-cum-Special Judge for A.P. Protection of Depositors of Financial Establishments Act, 1994, at Eluru, West Godavari District, and transfer the same to Principal District Judge-cum-Special Judge for A.P. Protection of Depositors of Financial Establishments Act, 1994, at Ongole, Prakasam District.

Heard, the learned counsel for the petitioners, learned Public Prosecutor appearing for the respondent-State, and perused the material on record.

It is contended that the Petitioners/A-6 to A-8 and the respondents/A-1 to A-5 and A-8 to A-26 are one and the same in several cases pending before different Courts and the offences allegedly committed by them are one and the same in all the cases. It is also contended that the petitioners are facing much difficulty, as different cases are pending in different Districts and that the Courts are posting those cases on the same dates. Therefore, it is getting impossible for them to appear before different Courts in 25 Crimes pending against them at different districts. It is finally contended that since the charge sheet is arising out of the same transaction, but in different districts, to avoid conflicting judgements, it is appropriate to withdraw the C.C. No.3 of 2017 pending on the file Principal District Judge-cum-Special Judge at Eluru, West Godavari District, and transfer to the Court of Principal District Judge-cum-Special Judge at Ongole.

Learned Public Prosecutor opposed the Petition on the ground that it would be difficult for the prosecution to produce the witnesses from different districts before the Principal District Judge-cum-Special Judge, Ongole, and the Investigating Officer is different though Investigating Agency is one and the same and requested to dismiss the Petition.

As seen from the allegations made in the charge sheet and the case in C.C. No.3 of 2017 pending before the Principal District Judge-cum-Special Judge for A.P. Protection of Depositors of Financial Establishments Act at Eluru, West Godavari District, and other crimes at different districts, they arose out of the same incident and charge sheets are filed for the identical offence based on different complaints. Though the witnesses are different in all the crimes and in C.C. No.3 of 2017 pending before the Principal District Judge-cum-Special Judge for A.P. Protection of Depositors of Financial Establishments Act, Eluru, West Godavari District, it is getting impossible for the petitioners to appear before the Courts in several Districts at a time on 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 every likelihood of getting 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 such Criminal Court of equal or superior jurisdiction. At the same time, Section 407(2) Cr.P.C. 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.

Here, the present case would fall within Section 407(1)(c) and (2) Cr.P.C as all the cases are class by itself and in case, this case is not withdrawn and transferred, there is likelihood of getting conflicting judgments, if several cases are decided by different Courts.

The identical question came up before the Apex Court in **Ranbir Yadav Vs State of Bihar**¹, wherein the Apex Court, taking into consideration 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

¹ (1995) 4 SCC 392

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 Vs State of Haryana (AIR 1996 (SC) 2759)**.”

In **State of Rajasthan Vs Manjeet Singh** (Criminal Writs (CRLW) No.31 of 2016), the 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 subordinate 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 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 petitioners; 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 Vs State of Bihar and others**², the Apex Court exercised power of transfer and changed seat of Court. But in **G.X. Francis and others Vs Banke Bihari Singh and another**³, 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 Vs State of Haryana**⁴, the Apex Court held that consistent view of the Court is that when the public

² (2010) 4 SCC 653

³ AIR 1958 SC 309

⁴ AIR 1996 SC 2759

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, 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 offences allegedly committed by the petitioners, I deem it appropriate to exercise power under Section 407 Cr.P.C.

In the result, the Transfer Criminal Petition is allowed. However, C.C. No.3 of 2017 pending on the file of Principal District Judge-cum-Special Judge for A.P. Protection of Depositors of Financial Establishments Act, 1994 at Eluru, West Godavari District is withdrawn and transferred to the Court of Principal District Judge-cum-Special Judge for A.P. Protection of Depositors of Financial Establishments Act, 1994, at Guntur, Guntur District, where nine charge sheets are yet to be filed to decide all the cases in accordance with law.

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

M. SATYANARAYANA MURTHY, J

Date: 20.08.2018.
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