

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.CRL.P.No.274 OF 2017

ORDER:

This transfer criminal petition is filed under Section 407 Cr.P.C with a request to withdraw S.C.No.393 of 2015 pending on the file of Assistant Sessions Judge, Nuzvid and transfer the same to X Additional District and Sessions Judge-cum-Special Judge SC and ST (POA) Act, Machilipatnam.

Sessions Case No.393 of 2015 pending on the file of Assistant Sessions Judge, Nuzvid and S.C.No.29 of 2014, pending on the file of X Additional District and Sessions Judge-cum-Special Judge SC and ST (POA) Act, Machilipatnam are arising out of the same incident and they are case and counter case. The time, date and scene of offence are one and the same and the witnesses in one case are the accused in other case. Therefore, the petitioners filed petition under Section 408 Cr.P.C. to withdraw S.C.No.393 of 2015 and transfer to X Additional District and Sessions Judge-cum-Special Judge SC and ST (POA) Act, Machilipatnam, but the Sessions Judge dismissed the petition holding that both cases are distinct and not case and counter case. Aggrieved by the same, the present petition is filed on various grounds.

During hearing, learned counsel for the petitioners contended that both the cases are arising out of the same incident and that there is a specific reference about connection between two cases in S.C.No.29 of 2014 and and counter case. In the charge sheet itself, at page 3 last para, it is specifically stated that the sessions case is counter case to the other case pending before the other Court. But

the Sessions Judge on erroneous appreciation of fact, dismissed the petition and prayed to allow the transfer criminal petition.

The Sub Inspector of Police filed charge sheet in S.C.No.393 of 2015, before the Assistant Sessions Judge, Nuzvid, registered for the offence punishable under Sections 147, 148, 447, 427, 324, 307 read with 149 IPC alleging that the incident occurred on 21.05.2012 at about 01.30 hours and whereas the offence in S.C.No.29 of 2014 pending before X Additional District and Sessions Judge-cum-Special Judge SC and ST (POA) Act, Machilipatnam, registered for the offences punishable under Sections 302, 143, 341, 324 read with 149 IPC and Section 3(2)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Most of the witnesses are the accused in the other case. At the same time, the charge sheet filed in the sessions case pending on the file of Special Judge, there is a clear reference in last para of page 3 that scene of offence, time and date are one and the same in Crime Nos.60 and 61 of 2012 of A.Konduru Police Station and the seized incriminating material objects were used by the accused in case and also in counter case simultaneously. These observations in the charge sheet are sufficient to conclude that both the cases arose out of the same incident as case and counter case. When two cases are pending before the two different Courts arising out of the same incident, they can be tried simultaneously and the District and Sessions Judge himself referred the judgment of the Apex Court in **Sudheer v State of Madhya Pradesh**¹, where the apex Court is of the view that it is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same

¹ 2001(2) ALT (CrI)79 SC

Court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called 'case and counter case' by some High Courts as 'cross cases' by some other High Court. Way back in nineteen hundred and twenties a Division Bench of Madras High Court (Waller and Cornish, JJ) made a suggestion (In Regoriparthi Krishtamma 1929 Madras Weekly Notes 881) that "a case and counter case arising out of the same affair should always, if practicable, be tried by the same Court; and each party would represent themselves as having been the innocent victims of the aggression of each other.

In the present case, variation of time is two hours hardly in the two incidents between the same parties. The first incident took place at 08.00 am and the second incident took place at 10.00am at same place. It is made clear that two cases are case and counter case in Crime Nos.60 and 61 of 2012 of same police station. If for any reason, these two cases are tried by two different Courts, it is impossible for the Courts to record specific finding, who is aggressor.

The judgment of this Court in **Adapa Gangadhara Rama Rao @ Gangadhar and others v State of Andhra Pradesh**², wherein it was held that when there are case and counter cases, both must be tried and must be disposed of simultaneously by one and the same Judge and must be disposed of simultaneously, otherwise, it is not possible to arrive at a definite conclusion as to genesis of incident and also to fix up the aggressors.

² LC 2010(11) AP 96

In view of the above, the Court finds that there is possibility of conflicting judgments in the event of disposal of two Sessions Cases by two different Courts, the Court can exercise its discretionary jurisdiction to withdraw and transfer the case.

In the result, the transfer criminal petition is allowed. S.C.No.393 of 2015 pending on the file of Assistant Sessions Judge, Nuzvid is transferred to the file of X Additional District and Sessions Judge-cum-Special Judge for SC & ST (POA) Act, Machilipatnam and the Special Judge is directed to pronounce judgments of both cases simultaneously on the same day.

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

18.07.2018
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M.SATYANARAYANA MURTHY,J

