

(1970) 12 AP CK 0006
In the Andhra Pradesh High Court
In Re: S.R. Narasimlu

Date of Decision : 07-12-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1972) CriLJ 434

Hon'ble Judges : Lakshmaiah, J

Bench : Single Bench

Judgement

Lakshmaiah, J.—This is an application filed u/s 526 of the Code of Criminal Procedure requesting this Court to transfer the case Crime No. 143 of 1970 on the file of the Munsif Magistrate, Karimnager, Karimnagar District, to any other Magistrate's Court in any other District.

2. The petitioner is accused No. 1 in that case. A charge-sheet was filed against him u/s 420, I. P. C. on the allegation that he was paid an amount of Rs. 9,000/- by the complainant one by name Madhavaneni Venkata Rao in SC No. 2/70 on the file of the Sessions Judge, Karimnagar for setting acquittal of the accused involved in that case. That amount was alleged to have been paid on 14-7-1970. The judgment in that case was delivered on 21-7-1970 and out of the 18 accused, 9 were acquitted and the other 9 were convicted to various terms of imprisonment. The charge-sheet states that out of the amount of Rs. 9,000/-, the accused paid back Rs. 5,000/- and retained only Rs. 4,000/- with him. It is also further alleged in the charge-sheet that the petitioner herein could not influence the Sessions Judge at Karimnagar in the matter of Judgment or otherwise and knowing this fully well, he dishonestly induced P. Ws. 1 and 2 to part with an amount of Rs. 9,000/- and he got the same by fraudulently representing that he would influence the Sessions Judge by paying the money and to get the accused in the said case acquitted. On those allegations the charge-sheet now pending before the Munsiff Magistrate Karimnagar is stated to have been filed.

3. The petitioner herein stated in his affidavit filed in support of the transfer petition that when he applied for the bail, it became difficult for him to get an

advocate to move the bail application as there was a reference in the charge-sheet to the learned Sessions Judge. He states that he does not know any of that P. Ws. and that they did not meet them at any time nor they paid the amount to him. Accused No. 2 according to the petitioner used to bring the car for repairs. Excepting this, it is stated that he never had any occasion to see the learned Sessions Judge at any time. He has been working for the last 25 years in the R. T. C. department, maintaining a clean record and this case was unnecessarily foisted by persons who are not well-disposed towards him and that he was not in Karimnagar when the amount of Rs. 9,000/- was alleged to have been paid to him on 14-7-1970 at 7-00 P. M. and that he was on duty at that time at Hyderabad.

4. It was further stated in the affidavit by the petitioner that the learned Munsiff Magistrate and the Sessions Judge are neighbours in Karimnagar and that there is every likelihood of a free talk about this case in between them two and that would naturally obsess the mind of the learned Munsif Magistrate in proceeding with the matter and that when the learned Sessions Judge's name was freely mentioned in the proceedings, and the Munsif Magistrate being a subordinate officer of the learned Sessions Judge, it would not be fair that the officer subordinate to the Sessions Judge directly in the district should go on with the matter. Barring that the petitioner does not choose to allege anything against the learned Munsif Magistrate.

5. Apart from what is stated above, the petitioner further submitted that he found it exceedingly difficult to get an advocate at Karimnagar to defend his case and that he has approached several advocates but nobody has taken up his case in order to defend him. Under those circumstances, he apprehends that he will suffer considerably in his defence and that he may not have a fair trial as according to him the learned Munsif Magistrate may not be in a position to take an independent view of the matter.

6. Besides what was stated above, the petitioner states that the cheating involved is only an amount of Rs. 4,000/- and that it was alleged that Rs. 5,000/- was already paid by him though it was denied by him and that he pleaded not guilty. But, even then, it seems the District Munsif, according to the petitioner, directed him to furnish security for an amount of Rs. 6,000/- for releasing him on bail and to execute a personal bond for Rs. 3,000/-. The imposition of these conditions created in the mind of the petitioner an apprehension that he may not have a fair disposal of his case before him. As the learned Sessions Judge's name is referred in the charge-sheet filed against him, he says that it is better that the case be transferred for being tried to any district other than Karimnagar District.

7. The learned Public Prosecutor opposes this petition by stating that no case much less a prima facie case is made out for the transfer and as the petitioner alleged nothing against the Munsif Magistrate, this Court need not transfer the case from his file.

8. The learned Counsel Sri Madhava Rao appearing for the petitioner submits that in view of the fact that the petitioner finds it exceedingly difficult to secure the services of any advocate to defend his case this Court may consider the desirability of granting the prayer in the transfer petition. He drew my attention to a decision of AIR 1925 672 (Oudh) for the position that where no practitioner in a district ordinarily employed in criminal cases is willing to act for the accused, it is a good ground for transfer of the case to another district. Reliance was also placed by the learned Counsel appearing for the petitioner on a decision in Bagomal v. Noor Nabikhan AIR 1935 Sind 195. Where the accused happened to be a tapedar who was accused of having attempted to bribe the Collector and the Magistrate of the District happened to be a complainant, the case at the request of the accused was transferred to another District Magistrate.

9. The petitioner categorically states that he could not secure the services of any advocate at Karimnagar to defend him and that he entertains a reasonable apprehension as regards the fair treatment of his case from the hands of the learned Munsif Magistrate. I am not convinced with the latter ground but, so far as the former ground is concerned, this is a fit case where I find that having regard to the object of criminal jurisprudence unless the accused is satisfied that he is defended properly the proceeding should not be allowed to proceed and in this case the accused swears to an affidavit to the effect that he found exceedingly difficult to get an advocate to defend his case and that he approached several advocates but nobody was taking up his case in order to defend him. In view of that the very object and purpose of criminal jurisprudence will be defeated or frustrated if the accused is compelled to proceed in the absence of proper defence.

10. For the aforesaid reasons the case No. 143 of 1970. on the file of the Munsif Magistrate Karimnagar, Karimnagar District is directed to be transferred to the file of the Chief City Magistrate. Hyderabad, so that he can make it over to any competent Magistrate within the City for disposing of the same.