
(1975) 02 AP CK 0013
In the Andhra Pradesh High Court

The Public Prosecutor

APPELLANT

Vs

D. Venkataranga Reddy

RESPONDENT

Date of Decision : 12-02-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 177, 178, 179, 180

Penal Code, 1860 (IPC) — Section 109, 114, 166, 202, 324

Citation : (1976) CriLJ 1252

Hon'ble Judges : Ramachandra Raju, J

Bench : Single Bench

Judgement

Ramachandra Raju, J.—These two criminal miscellaneous petitions which are connected have been filed in the following circumstances:

2. The petitioner in Crl. M. P. No. 2201 of 1974 is the State. The petitioner in Crl. M. P. No. 2639 of 1974 is the complainant out of whose complaint against four Police Officers who were working in Anantapur District at the relevant time, viz., the Assistant Superintendent of Police and the Sub-Inspectors of Police for offences under Sections 166 202, 330, 365, 367, 368 and 324 read with Sections 109, 114 and 34, Indian Penal Code. P. R. C. No. 19 of 1971 was registered in the court of Judicial First Class Magistrate, Anantapur. On a complaint filed by the Police against the same complainant, C. C. No. 93 of 1973 was taken on file by the Judicial First Class Magistrate, Anantapur. The Magistrate committed the four police Officers to Sessions in Sessions Case No. 72 of 1974 on the file of the Assistant Sessions Judge, Anantapur. The Government acting u/s 185 of the Code of Criminal Procedure directed the Sessions Case No. 72 of 1974 to be tried in the Metropolitan Sessions Division Hyderabad. The complainant has filed the above Crl. M. P. No. 2639 to re-transfer the case to the file of the Assistant Sessions Judge, Anantapur. Crl. M. P. No. 2201 of 1974 was filed by the State for transferring C. C. No. 93 of 1973 to the file of the Metropolitan Sessions Division, Hyderabad to be tried along with the Sessions case No. 72 of 1974 transferred to its file.

3. Sri Padmanabha Reddy, learned Counsel appearing for the complainant, did not seriously contest for the trial of the two cases by the same Court; but he strongly urged that there are absolutely no valid grounds for trying the cases in Hyderabad instead of at Anantapur.

4. The relevant facts relating to the two cases may be stated thus. On the night of 10-10-1971 the accused in the sessions case viz., the four Police Officers along with some constables searched the house of the complainant on the ground that he was harbouring some accused in a murder case which took place in Anantapur District. According to the complainant all the accused and some constables entered the house of the complainant and searched the house thoroughly even without a search warrant and they did not find any of the accused persons whom they wanted. Then the first accused in the sessions case compelled the complainant against his will to get into a jeep. The complainant being afraid of the police got into the jeep though he was unwilling. He was taken to the taluk police station at Anantapur. There he was tortured to confess that he harboured the absconding accused in the murder case. He was beaten and he received a bleeding injury. On a petition filed by the complainant's nephew, the Judicial First Class Magistrate Anantapur visited the complainant in the taluk Police Station at Anantapur at 12-40 P. M. and recorded a statement from him and also took a statement from the sentry and released him on bail. After release he was admitted in the Government Hospital as an inpatient and he undertook treatment there. With these allegations he made the complaint against the four Police Officers, the accused in the sessions case.

5. It is the case of the State that the four Police Officers were working in Anantapur District when the accused in the murder case, who were known to be closely related to the complainant, were absconding. On receipt of information that the complainant was harbouring the absconding accused in his own house, the Assistant Superintendent of Police, the 1st accused in the sessions case, raided the house of the complainant on the midnight of 10-10-1971. The complainant delayed the opening of the doors of his house and facilitated the escape of the absconding accused that were harboured there. The Police party chased them in vain. Thereupon the complainant was arrested and brought to the Singanamala Police Station for interrogation. The complainant attempted to escape from the Police custody and assaulted the Sub-Inspector. When he tried to escape, he fell down and sustained a minor injury. Therefore a case was registered against the complainant in Crime No. 98 of 1971 of Singanamala Police Station and that is the subject-matter of C. C. No. 93 of 1973.

6. On these allegations and counter allegations Sessions Case No. 72 of 1974 and C. C. No. 93 of 1973 have arisen.

7. According to the complainant he cited 30 witnesses and almost all of them are the residents of Dorigalu Village in Anantapur District and it is difficult and almost impossible for the complainant and his witnesses to attend the Court at Hyderabad incurring heavy expenditure. The complainant had already engaged a

number of advocates at Anantapur and it would be difficult for him to bring them to Hyderabad for every adjournment and therefore the cases should be tried at Anantapur only and not at Hyderabad. According to the State the complainant is a rich landlord in Anantapur District connected by personal intimacy and relationship with powerful politicians and high officials in the State and the witnesses are not free from the influence of the complainant and the atmosphere prevailing at Anantapur is not congenial for the proper conduct of the cases.

8. So far as the witnesses are concerned whether the cases are to be tried at Anantapur or at Hyderabad they will be the same. It is very difficult to understand the allegation made by the State that the complainant has personal intimacy not only with powerful politicians but also with high officers of the State, The reasons disclosed by the State in the counter filed by it do not seem to be valid at all. It is not even the case of the State that the four accused in the Sessions Case, who are Police Officers, are at Hyderabad even to think that it will be to their convenience if the cases are tried at Hyderabad.

9. Sri A. V. Koteswara Rao, counsel who appeared for two of the four accused Police Officers in the Sessions Case, supported the State for the trial of the two cases at Hyderabad only and opposed the petition filed by the complainant for transfer of the Sessions case from the file of the Hyderabad Metropolitan Sessions Division to the file of the Assistant Sessions Judge, Anantapur. He submitted arguments raising the following questions. Once the Government passed an order exercising the power given to it u/s 185 of the Code of Criminal Procedure transferring the Sessions case from Anantapur Sessions Division to the Hyderabad Metropolitan Sessions Division, the present petition filed by the complainant for re-transfer of the case from the Hyderabad Metropolitan Sessions Division again to the Anantapur Sessions Division is not maintainable without at first getting the order passed by the Government u/s 185, Criminal Procedure Code quashed or set aside by questioning the same in a writ proceeding filed under Article 226 of the Constitution of India. In the absence of a non obstante clause in Section 407, Criminal Procedure Code under which only the High Court has power to transfer cases and appeals from one court to another, the High Court is not competent to act u/s 407 when once action was taken by the Government u/s 185. Another argument submitted by the learned Counsel is that Section 407, Criminal Procedure Code does not refer to a case from one sessions division to another sessions division and as things stand today the Government directed the trial of the Sessions Case in the Hyderabad Metropolitan Sessions Division only and the sessions Case is not pending to-day in any particular court of the Hyderabad Metropolitan Sessions Division. The further argument of the learned Counsel is that though the sessions ease has arisen as a result of the private complaint filed by the complainant, it is the responsibility of the State to conduct the trial as provided u/s 225, Criminal Procedure Code and even if the witnesses who were residents of Anantapur district are reluctant to come to Hyderabad it is not as if the court is powerless and they can be made to attend the court by taking coercive steps. Therefore,

the complainant cannot be heard if he complains that it is difficult for the witnesses to travel from Anantapur to Hyderabad to give evidence.

10. I am not impressed by any of the arguments submitted by the learned Counsel. There is no question of quashing or setting aside as such of the order passed by the Government u/s 185, Criminal Procedure Code directing the trial of the case in the Hyderabad Metropolitan Sessions Division instead of in the Anantapur Sessions Division. The prayer in the petition is not for setting aside that order. The Government might have thought that it is desirable for the case to be tried at Hyderabad than at Anantapur. As things stand today, the sessions case is now pending in the Hyderabad Metropolitan Sessions Division, Now, the complainant desires the transfer of that case to the court at Anantapur for the reasons given by him and filed the petition u/s 407, Criminal Procedure Code under which powers are given to the High Court for transfer of cases from one court to another. The question for consideration in this petition is not whether the order passed by the Government u/s 185, Criminal Procedure Code is valid or not. The simple question for consideration is whether for the reasons stated in the petition there is a case for transferring the sessions case from Hyderabad to be tried at Anantapur. Therefore there is no need or any question arises for setting aside the order of the Government passed u/s 185, Criminal Procedure Code before the complainant could invoke the power of this Court u/s 107, Criminal Procedure Code for transfer of the case. With regard to the other argument, viz., in the absence of any non obstante clause in Section 407, when once the Government has exercised its power u/s 185, the High Court has no power u/s 407. Section 185 occurs in Chapter XIII of the Code which deals with jurisdiction of the Criminal Courts in enquiries and trials. It is provided u/s 177 that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. But power was given to the Government u/s 185 that in spite of conferring of jurisdiction for trial of a particular offence by any particular court as provided u/s 177, to give a direction to try that case in a different sessions division than a court in the Sessions division to which the case was committed having regard to local jurisdiction. Therefore u/s 185, Criminal Procedure Code the Government can confer jurisdiction on another sessions division than the one within whose local jurisdiction the offence was committed. u/s 407, Criminal Procedure Code power is given to the High Court to transfer cases from a criminal court subordinate to its authority to another such criminal court of equal or of superior jurisdiction. The power given to the High Court u/s 407 is in spite of the jurisdiction conferred on any court under Sections 177 - 185 (both inclusive). It is so provided u/s 407 stating that the High Court may order that any offence be inquired into or tried by any court not qualified under Sections 177 - 185 (both inclusive) but in other respects competent to inquire into or try such offences. From this provision it is absolutely clear that for any of the reasons mentioned in Section 407, the High Court has absolute power to transfer a case from one court to another competent to inquire into or try such a case, though the later court has no jurisdiction

conferred on it under any of the Sections 177 - 185. Therefore, though the Government conferred jurisdiction to try the case in the Hyderabad Metropolitan Sessions Division by a special order when it is not the division within whose local jurisdiction the offence was committed, the High Court still has power u/s 407 to transfer the case back to a court in the Anantapur Sessions Division if there are sufficient reasons for doing so.

11. With regard to the argument of the learned Counsel that the power conferred u/s 407 on the High Court is only to transfer a case from one court to another and not from one Sessions division to another and as the case is now in the Hyderabad Metropolitan Sessions Division, that case cannot be transferred to the Anantapur Sessions Division as required by the complainant, as provided u/s 185 the Government can only direct a case to be tried in a different sessions division. It is for the principal Sessions Judge of that sessions division either to try the case in his court or to transfer it to the court of any other Sessions Judge in his division. Therefore, when the case was directed to be tried in the Hyderabad Metropolitan Sessions Division, it has to be tried by some Sessions Court in that division. Therefore, when the prayer is to transfer the case from the Hyderabad Metropolitan Sessions Division as that case has not yet been ordered by the Sessions Judge to be tried by a particular court, the request is only to transfer the case from a court in the Hyderabad Metropolitan Sessions Division to the court of the Assistant Sessions Judge, Anantapur.

12. There is also no substance in the argument of the learned Counsel that in the absence of any non-obstante clause in Section 407, the powers given to the High Court u/s 407 are subject to the power of the Government to confer jurisdiction on a different sessions division as provided u/s 185. As already discussed above, in spite of obtaining jurisdiction by a court to try a case as provided under Sections 177 - 185, the High Court has power to transfer a case from that court to any other court not so qualified. Under these circumstances, I do not find any difficulty in coming to the conclusion that this Court has power as provided u/s 407 to transfer the case from the Hyderabad Metropolitan Sessions Division to the court of the Assistant Sessions Judge, Anantapur as prayed for by the petitioner.

13. Then remains to be considered the question whether there are justifiable grounds for transferring the case to the court of the Assistant Sessions Judge, Anantapur, within whose jurisdiction the offence took place. It is provided u/s 407, that transfer of a case can be made from one court to another as mentioned therein if it tends to the general convenience of the parties or witnesses or is expedient for the ends of justice.

14. I do not find any substance in the argument of the learned Counsel that it is not the concern of the complainant with regard to the convenience of the witnesses to attend the trial because the case being a sessions case it is for the State to worry about the conduct of the trial and not that of the complainant. Even though as provided u/s 225 every trial before a Court of Session the

prosecution shall be conducted by the Public Prosecutor the complainant is vitally interested in the conduct of the trial, the prosecution having been launched on his complaint and at his instance. Even though the prosecution is to be conducted by the Public Prosecutor, the convenience of the complainant and the prosecution witnesses is a relevant matter to be considered for the purpose of Section 407. Admittedly 30 persons of Anantapur District have been cited as prosecution witnesses. The complainant also belongs to that place. As already mentioned above, the reasons disclosed by the State in the counter opposing the transfer of the Sessions case to the Court of the Assistant Sessions Judge, Anantapur, do not seem to be valid at all. There is no doubt that the balance of convenience will be to try the two cases at Anantapur only. Accordingly the Sessions case is transferred to the Court of the Assistant Sessions Judge Anantapur from the Metropolitan Sessions Division, Hyderabad, and so also C. C. No. 93 of 1973 on the file of the court of the Judicial First Class Magistrate, Anantapur, is transferred to the Court of the Assistant Sessions Judge, Anantapur, so that the two cases can be tried by the same court. The petitions are ordered accordingly.