

**(2002) 09 AP CK 0007**

**Andhra Pradesh High Court**

**Case No:** Transfer Criminal M.P. No. 2767 of 2002

Chidipirala Narayana Reddy

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

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**Date of Decision:** Sept. 9, 2002

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 321

**Citation:** (2002) 2 ALD(Cri) 670 : (2002) 2 ALT(Cri) 464 : (2003) CriLJ 1642

**Hon'ble Judges:** C.Y. Somayajulu, J

**Bench:** Single Bench

**Advocate:** C. Kannabiran and Ravi Shankar Jandhyala, for the Appellant; Addl. P.P. Counsel for respondents 2 to 11, C. Padmanabha Reddy and C. Praveen Kumar, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.

This is an application seeking transfer of S.C.No.473 of 1993 on the file of the Court of the II Additional District and Sessions Judge (Fast Track Court), Mahabubnagar to any Court out side Mahabubnagar and Cuddapah Districts.

2. One Narayana Reddy, brother's son of Siva Sankar Reddy, (first deceased in the Sessions Case) who is cited as L.W.22 in the case, filed this petition seeking transfer of the case to a Court outside Mahabubnagar District mainly on the ground that A-7 in the case and his former counsel hail from Mahabubnagar District and are Ministers in the State Government and as such have considerable influence in the Government and also in the District and so he has an apprehension that the witnesses may not give evidence fearlessly and the Public Prosecutor appointed may not discharge his duty impartially. The contention of the accused and also the State is that there are no grounds to transfer the case.

3. It is necessary to state some undisputed facts. The State Government issued G.O.R.T.No.1442, dated 21-6-1996 withdrawing prosecution against A-7. In pursuance of that G.O., and the consequential proceedings No.D2/1124/96 dated 18-7-1996 issued by the Collector instructing the Public Prosecutor to file a petition u/s 321 Cr.P.C., the Public Prosecutor filed CrI.M.P.No.786 of 1996 to record the withdrawal of prosecution against A-7. The learned Additional Sessions Judge by his order dated 25-7-1996 allowed the said petition. One D.Subba Rao filed W.P.No.15765 of 1996 challenging the withdrawal of the case against A-7. By an order dated 22-9-2000, my learned brother V.V.S.Rao, J., while setting aside the order of the learned Additional Sessions Judge in CrI.M.P.No.786 of 1996, did not set aside G.O.RT.No.1442, dated 21-6-1996, and gave liberty to the Public Prosecutor to file a separate application in accordance with law. Thereafter A-7 filed CrI.M.P.No.1342 of 2000 seeking discharge, and Public Prosecutor filed CrI.M.P.No.1453 of 2000 seeking permission to withdraw the case against A-7. Both the petitions were dismissed by the learned Additional Sessions Judge. A-7 filed CrI.R.C.No.1230 of 2000 and State filed CrI.R.C.No.1280 of 2000, questioning the order of dismissal of petitions by the learned Additional Sessions Judge. Both the revision cases were dismissed by my learned brother T.Ch.Surya Rao, J., by a common order dated 13-2-2001. A-7, and State also, preferred SLP (CrI) No.1469 of 2001 and SLP (CrI) No.2980-2981 of 2001 before the Supreme Court questioning the common order dismissing the revisions. Both the S.L.Ps., were dismissed on 8-5-2001 and 27-8-2001 respectively by the Supreme Court. Subsequently the case was transferred from the Additional Sessions Court to II Additional Sessions Court (Fast Track Court) after its establishment. Since the wife of the 1st deceased did not have confidence in the Public Prosecutor who was looking after the case, she filed an application to appoint a Special Public Prosecutor to conduct the prosecution. By the Memo No.45072/Cts/A2/2001-2 dated 17-4-2002 of Home (Courts-A) Department she was asked to state if she is willing to pay the remuneration for the Special Public Prosecutor if appointed. She, by her letter dated 4-5-2002, answered in the affirmative. By Memo No.45072/Cts.A/A2/2001-3 dated 21-6-2002 of Home (Courts-A) Department she was informed that as a new Additional Public Prosecutor, Sri P.Laxma Reddy, is appointed to the II Additional Sessions Court, her request for appointment of a Special Public Prosecutor is not feasible.

4. The contention of Sri Kannabiran, learned Senior Counsel appearing for the petitioner, is that the fact that not only A-7 but the State also filed a petition seeking Special Leave to appeal to the Supreme Court against the dismissal of the revision by this Court, confirming the orders of the Sessions Judge dismissing the petition for discharge of A-7 and the fact that request for appointment of a Special Public Prosecutor, in spite of the widow of the 1st deceased expressing her willingness to pay the fees payable to the Special Public Prosecutor, was refused and since the Public Prosecutor appointed to the II Additional Sessions Court is related to a powerful leader of Telugu Desam Party of the District, made the petitioner and the

relatives of the deceased feel that the Government is favouring A-7, and since A-7 and the present Law Minister, who earlier appeared for him, hail from Mahabubnagar District, there is every reason for relatives of the deceased doubting that the prosecution may not be conducted properly if the case is tried in Mahabubnagar District, and prosecution witnesses may not speak fearlessly. The contention of Sri C. Padmanabha Reddy, the learned Senior Counsel for the accused, is that A-7 and the State availing the remedies open to them is not and cannot be a ground for transferring the case. It is his contention that since all Public Prosecutors would be appointed by Government on the recommendations of the District Judge and the Collector of the District concerned, but not by the Government suo motu, the contention that Public Prosecutor will not act fairly and impartially cannot be believed or accepted and so there are no grounds for transfer. The contention of the learned Additional Public Prosecutor is that without making the Public Prosecutor a party to the petition, petitioner should not have made comments against the Additional Public Prosecutor and contended that since the prosecution witnesses are given protection, there are no grounds or reasons for their apprehension and that petitioner did not make out any case for transfer of the case from Mahabubnagar District to any other District.

5. It is well known that justice should not only be done but should also appear to be done. Party availing remedies open to him, is no doubt not a ground for transfer. A-7 filing a revision and SLP against the petitions refusing his prayer for discharge is understandable. The relatives of the 1st deceased apprehending that A-7, being a Minister, by exercising his power and influence, is trying his best to see that the case against him withdrawn, cannot be said to be groundless because, very rarely would State also prefer a revision and SLP after dismissal of its revision seeking discharge of an accused, when the accused himself has been pursuing the remedies open to him. Government refusing to accept the request of the widow of the first deceased for appointment of a Special Public Prosecutor, in spite of her expressing her willingness to pay the fees payable to him, strengthens their apprehension. Since no specific averments are made against the Public Prosecutor of the Court of II Additional Sessions Judge, there is no need to make him a party to this petition. The allegation that the present Law Minister appeared for A-7 in this case earlier is not denied or disputed. When a Minister from the District is an accused in the case, and when the Law Minister who also hails from the same District appeared for him earlier, the apprehension of the relatives of the deceased victims in the case that the prosecution witnesses may not be able to give evidence freely and fearlessly, appears to be a reasonable apprehension. Some of the prosecution witnesses admittedly are given police protection, which clearly indicates that there is threat or impending danger to them. A witness under threat may not be free to state what he wants. Safety and security of witnesses also is an important aspect in criminal justice administration. To enable the witnesses to depose without fear, the case deserves to be transferred outside Mahabubnagar District.

6. As seen from the charge sheet, many of the witnesses are from Cuddapah and Mahabubnagar Districts. Since Mahabubnagar, where the case is pending, is near to Hyderabad neither the accused nor the prosecution witnesses would be put to any sort of inconvenience if the case is transferred to Hyderabad for Mahabubnagar. Therefore the case can be transferred to Hyderabad from Mahabubnagar.

7. In the result, the petition is allowed and S.C.No.473 of 1993 on the file of the Court of the II Additional District and Sessions Judge (Fast Track Court), Mahabubnagar is withdrawn from that Court and is transferred to the Court of Metropolitan Sessions Judge, Hyderabad, for disposal according to law. The learned Metropolitan Sessions Judge, Hyderabad shall give top priority to the case and dispose of the same as expeditiously as possible, at any rate within six (06) months from the date of receipt of this order and records from the II Additional Sessions Court, Mahabubnagar.