

(1992) 09 AP CK 0003

Andhra Pradesh High Court

Case No: Tr. Criminal M.P. No. 1074 of 1992

M. Shyam Prasad Reddy and
Others

APPELLANT

Vs

State of Andhra Pradesh and
Another

RESPONDENT

Date of Decision: Sept. 28, 1992

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 407
- Prevention of Insults to National Honour Act, 1971 - Section 2

Citation: (1992) 3 ALT 535 : (1992) 2 APLJ 343 : (1992) 1 APLJ 413

Hon'ble Judges: Iyyapu Panduranga Rao, J

Bench: Single Bench

Advocate: Koka Raghava Rao, for the Appellant; Public Prosecutor for Respondent No. 1 and K.V.N. Bhoopal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Iyyapu Panduranga Rao, J.

This petition is directed to transfer C.C. No. 207 of 1991 on the file of the Judicial 1st Class Magistrate, Guduru to any court in the Metropolitan Division, Hyderabad for disposal according to law.

2. Though number of points were urged in support of the transfer, only two points deserve consideration. They are: 1. That it is convenient for the petitioners and it is expedient for the ends of justice to have the matter tried at Hyderabad as contemplated u/s 407(1)(c) of the Code of Criminal Procedure (in brief "the Code"); 2. The matter involves question of law of unusual difficulty coming u/s 407(1)(c) of the Code.

3. Points 1 & 2: It is the case of the petitioners that the 2nd respondent who is the complainant in the case is a practising advocate at Guduru, the petitioners are feeling it highly difficult to get the services of any advocate at Guduru. Referring to this point at para 6 of the affidavit filed in support of the petition it is averred as follows:

"On coming to know about the date, I contacted Sri Y. Rama Rao, Advocate, Guduru for details regarding the further steps to be taken, but his attitude created an impression that the complainant being a practising Advocate in the same court influenced the said Advocate. When I tried to contact some other advocates at Gudur, they expressed their reluctance."

Thus though as on today one Mr. Y. Rama Rao, Advocate is defending the petitioners in the Criminal case it is the contention of the petitioners that they are not having full co-operation from the counsel. It is the further contention of the petitioners that when they tried to contact other advocates practising at Guduru they expressed their reluctance for the reason that the complainant in the said case is no other than a practising advocate of that place while all accused in the criminal case are from Madras. When the learned counsel appearing for the second respondent submits that the petitioners can bring some advocates from neighbouring place, Nellore, Sri Raghava Rao, Advocate appearing for the petitioners submits across the bar that the petitioners tried that also unsuccessfully. The contention of the petitioners is that they are from Madras, the case was instituted by the second respondent who is a practising advocate of Guduru and consequently they are not able to requisition the services of a competent advocate either at Guduru or at nearby places and consequently it is submitted that it is expedient for the ends of justice to have the case tried at Hyderabad. It is further submitted on behalf of the petitioners that the 2nd respondent who filed the criminal case is an Advocate, this is not a case involving examination of number of witnesses as what all it required is. mostly interpretation of Section 2 of the Prevention of Insults to National Honour Act, 1971 (in brief "the Act") and consequently by the transfer the 2nd respondent is also not prejudiced or much less inconvenienced by the said course. It is true that as could be seen from the facts of the case the contention of the second respondent who is the complainant in the criminal case is that the national flag was made to fly in the reverse order on the car in which the character portraying the Chief Minister was going. Thus from the facts and circumstances of the case it is not a case involving examination of number of witnesses and that it is not a case where the second respondent - Complainant is put to any difficulty much less hardship in bringing the witnesses to the place where the case is transferred. Having considered the entire material on record I find that this submission is not without force.

4. Nextly it is submitted on behalf of the petitioners that the prosecution is one under the provisions of the Act, so far there is no decided judgment on this point by

any High Court or the Supreme Court under the Act and consequently it is desirable that the matter be heard in a place where the petitioners will be able to requisition the services of a senior Advocate, as for the first time the provisions of the Act have to be interpreted. It is further submitted that though Section 2 of the Act is silent regarding *metus rea* unless there is *mens rea* nobody can be punished under the Act and since so far the provisions of the Act have not been interpreted by any High Court or the Supreme Court it is desirable that the matter be argued by a senior and competent counsel such a course will be possible provided the case is heard in a place like Hyderabad.

5. Taking into consideration the facts and circumstance's of the case, more particularly, in view of the fact that the petitioners require the services of a senior counsel, I find that it is expedient in the ends of justice to have the matter tried by an officer of the cadre of Chief Metropolitan Magistrate or Chief Judicial Magistrate who is of the cadre of a District Judge. In a place like Nellore which is a cosmopolitan place there will not be any difficulty for the petitioners to requisition the services of a senior advocate and since petitioners are from Madras it is also easy for them to attend the court as and when necessary to give necessary instructions to their counsel.

6. Under these circumstances C.C. No. 207 of 91 of the file of the Judicial I Class Magistrate, Guduru is withdrawn and transferred to the file of the Chief Judicial Magistrate-cum-Additional District Judge, Nellore for disposal according to law. Since this case was instituted as early as in the year 1989 the learned Chief Judicial Magistrate, Nellore shall dispose of the case within three months from the date of receipt of records.

7. Accordingly the petition is ordered.