(2002) 12 AP CK 0039

Andhra Pradesh High Court

Case No: Criminal Petition No. 1654 of 2002

Immandi Satyavathi and Another		APPELLANT
	Vs	
State of A.P. and Another		RESPONDENT

Date of Decision: Dec. 20, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 408(2), 482
- Penal Code, 1860 (IPC) - Section 307, 34, 498A

Citation: (2003) 1 ALD(Cri) 407 : (2003) 1 ALT(Cri) 366 : (2003) 1 APLJ 311 : (2003) 2 DMC 51

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: E.V. Bhagiratha Rao, for the Appellant; K. Sesha Rajyam, Public Prosecutor for Respondent No. 1 and K. Chaitanya, for the Respondent

Final Decision: Allowed

Judgement

P.S. Narayana, J.

Heard Mr. E.V. Bhagiratha Rao, learned Counsel representing the petitioners (A-1 and A-2), Mrs. K. Sesha Rajyam, learned Public Prosecutor and Mr. K. Chaitanya, learned Counsel representing the de facto complainant, 2nd respondent herein.

2. The criminal petition is filed to quash the orders of transfer dated 22.2.2002 passed by the learned District and Sessions Judge, Visakhapatnam transferring S.C. No. 29/2001 from the file of the Assistant Sessions Judge, Anakapalle to the file of the Assistant Sessions Judge, Chodavaram. The facts of the case, in brief, are as follows.

3. The 2nd respondent, who is the wife of the 2nd petitioner and daughter-in-law of the 1st petitioner lodged a report dated 27.5.2000 with the S.H.O., Town Police Station, Anakapalle and on the basis of the said report a case in Cr. No. 109/2000 was registered for the offence Under Sections 498A and 307 read with 34, I.PC. After investigation the police filed the charge-sheet on 25.10.2000. It is stated that the

learned Assistant Sessions Judge, Anakapalle took up the case on file after committal as S.C. No. 29/2001 and issued summons to the petitioners. The learned Assistant Sessions Judge gave schedule for trial from 1.3.2002. It is also stated that the petitioner engaged a local Senior Advocate by paying fee and were ready to face trial. It is further stated that the learned District and Sessions Judge, Visakhapatnam passed the order dated 22.2.2002 withdrawing the case in S.C. No. 29/2001 from the file of the Assistant Sessions Judge, Anakapalle transferring the case to the learned Assistant Sessions Judge, Chodavaram. It is also stated that transferring the said case is not on administrative grounds as can be seen from the order dated 22.2.2002. It is only on an application filed by the de facto complainant dated 18.2.2002. It was also stated that the petitioners are not aware of the said application and no notice was given to the petitioners and hence the order of transfer is unjust and violative of the principles of natural justice.

4. Mr. E.V. Bhagiratha Rao, learned Counsel representing the petitioners (A-1 and A-2) had taken me through the impugned order and had pointed out that after referring to the application only the learned District and Sessions Judge, Visakhapatnam had exercised the powers conferred u/s 408 of the Code of Criminal Procedure (for short the "Code"). The learned Counsel also submitted that from the very nature of the order it cannot be said to be on administrative grounds and it being a judicial order the said order cannot be an order passed on judicial side by the learned District and Sessions Judge without issuing notice to the petitioners, who are really the effective parties if any, transfer of the case is made. The learned Counsel also had taken me through the language employed in Section 408 of the Code. The learned Public Prosecutor also had taken me through the impugned order and had submitted that in view of the nature of the order it is doubtful whether this withdrawal of the case was made on administrative side or on judicial side since in the beginning the application of the 2nd respondent dated 18.2.2002 is referred to. The learned Public Prosecutor also submitted that if it is an order to be construed on administrative side no notice is necessary, but, however, inasmuch as the application of the party had been referred to if it is to be construed to be an order on judicial side. It is always desirable that the Court should have exercised the power u/s 408 of the Code after issuing" notice to the affected parties i.e., petitioners herein.

5. Mr. K. Chaitanya, learned Counsel representing the 2nd respondent, de facto complainant had submitted that apart from the technicalities incorporated in the matter the importance of criminal aspect it has to be considered while deciding the transfer application. It was further submitted that the de facto complainant, the unfortunate wife, for the reasons explained in the application had requested for transfer and on consideration of the said application the learned District and Sessions Judge, Visakhapatnam had exercised the discretion properly u/s 408 of the Code and hence on the ground of technicalities of non-issuance of notice the impugned order need not be interfered with.

6. Heard the learned Counsel at length and perused the material available on record. It may be appropriate to have a look at the impugned order, which is questioned in the present criminal petition, and the said order dated 22.2.2002 reads as under:

"Sub: Sessions Division-Visakhapatnam District-Withdrawal of Sessions Case No. 29/2001 on the file of Assistant Sessions Judge, Anakapalle and transfer to the Assistant Sessions Judge, Chodavaram, for disposal, according to law--Orders --Issued.

Ref: Application dated 18.2.2002 of Smt. Imandi Ramalakshmi Radha w/o I.V.S.R. Prasad, Anakapalle (de facto complainant).

ORDER Dt. 22.2.2002

Under the circumstances stated by the applicant in the reference cited, and in exercise of powers conferred u/s 408 of Code of Criminal Procedure, 1973 the Sessions Judge is pleased to withdraw the Sessions Case No. 29/2001 on the file of Assistant Sessions Judge, Anakapalle, corresponding to Crime No. 109/2000 of Anakapalle (Town) P.S., and to transfer the same to the Assistant Sessions Judge, Chodavaram, for disposal according to law.

The Assistant Sessions Judge, Anakapalle is Instructed to send the records duly indexed to the Assistant Sessions Judge, Chodavaram.

The Assistant Sessions Judge, Chodavaram after receipt of the records shall proceed with the trial of the case and to dispose of the same according to law.

District and Sessions Judge Visakhapatnam."

7. It is no doubt true that as can be seen from the nature of the order it is an order passed exercising the powers both on administrative side and on judicial side. It is also no doubt true that only reference to the application was given and in the course of the order the application was referred to by the learned District and Sessions Judge while exercising the powers u/s 408 of the Code. Section 408(2) of the Code reads as hereunder:

"408. Power of Sessions Judge to transfer cases and appeals--

(1) X X X

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative."

8. It is no doubt true that the issuing of notice is not specific. But, however, when making an order of this nature on the application of a party, in my considered opinion, it is essential that the other parties who are affected, should be put on notice. Therefore, the learned District and Sessions Judge, while exercising the powers u/s 408 of the Code and before passing the impugned order a notice should

have been given to both the parties. In this view of the matter the impugned order is not sustainable. Hence the order impugned in this criminal petition is quashed.

9. However, the learned District and Sessions Judge, Visakhapatnam is directed to put on notice both the parties and dispose of the application filed by the 2nd respondent at the earliest point of time in the interest of justice and at any rate within a period of two weeks from the date of receipt of a copy of this order.

The criminal petition is accordingly allowed.