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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

CRIMINAL PETITION NO. 2459 OF 2022

BETWEEN:

1. DR SANJEEV KUMAR HIREMATH
AGED ABOUT 40 YEARS

...PETITIONER

(BY SRI. RAGHAVENDRA K.,ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY STATION HOUSE OFFICER
JAYANAGAR POLICE STATION
BANGALORE-560 007.
REP BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

2. DR RAGHAVENDRA

...RESPONDENTS

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by LAKSHMI T
Location: High
Court of
Karnataka



(BY SRI.K.NAGESHWARAPPA, HCGP FOR R1; SRI. SHRIKANTH BADARADINNI, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 407 CR.PC PRAYING TO TRANSFER THE CASE IN C.C.NO.23250/2018 PRESENTLY PENDING ON THE FILE OF THE II A.C.M.M BENGALURU CITY TO THE COURT OF THE LXX ADDL.CITY CIVIL AND SESSIONS JUDGE BENGALURU CITY TO BE TRIED ALONG WITH THE CASE IN SPL.C.C.NO.35/2018 PENDING ON THE FILE OF THE SAID COURT FOR BEING CLUBBED AND TRIED TOGETHER.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

JUDGMENT

In this petition filed under section 407 of Cr.P.C., petitioner has prayed to transfer C.C.No.23250/2018 pending on the file of the II Additional Chief Metropolitan Magistrate, Bengaluru City to the Court of LXX Additional City Civil and Sessions Judge, Bengaluru City and to try the said case along with Spl C.C.No.35/2018.

2. Petitioner is the first informant in Crime No.200/2017 registered at Jayanagar Police Station against one Raghavendra, in respect of an incident which took place at about 12.30 p.m. on 10.07.2017, which culminated in filing of charge-sheet against the said



accused for offences punishable under Section 341, 324, 504 and 506 of IPC. The offences alleged being triable by the learned Magistrate, the said case numbered as C.C.No.23250/2018 is pending on the file of the II Additional Chief Metropolitan Magistrate, Bengaluru City.

3. It is not in dispute that with regard to the very same incident which took place on 10.07.2017 a counter complaint was lodged by the respondent herein against the petitioner and his father, which was registered in Crime No.201/2017 of Jayanagar Police Station. On completion of investigation the police have filed charge-sheet against the petitioner and his father for offences punishable under Sections 323, 324 of IPC and Section 3(1)(r), 3(1)(s) of the SC/ST (Prevention of Atrocities) Act,1989 (SC/ST Act, for short). Since the offences under the SC/ST Act are triable by the Special Court, the charge-sheet was filed before the Special Court, numbered as Special Case No.35/018 and the same is pending before



the LXX Additional City Civil and Sessions Judge,
Bengaluru City.

4. Since both the cases arise out of a case and counter case, the petitioner herein preferred a petition under Section 407 of Cr.P.C. before this Court in criminal petition No.8468/2019. It is submitted by the learned counsel for petitioner that the said petition was withdrawn with a liberty to the petitioner to approach the learned Sessions Judge with an appropriate application. Thereafter, the petitioner approached the Sessions Court under Section 408 of Cr.P.C. in Criminal Misc No.4647/2021. The said petition was dismissed vide impugned order dated 19.11.2021.

5. One of the grounds for dismissal of the petition by the learned Sessions Judge was that Section 408(1) of Cr.P.C., only gives power to the Sessions Judge to transfer a case pending in one criminal Court to another criminal Court in his Sessions Division, but it does not give power



to Sessions Court to call for a case to that Court from the Magistrate Court without formal committal.

6. It is the contention of the learned counsel for respondent that the petitioner ought to have made an application under Section 323 of Cr.P.C., for committal of the case now pending before the learned Magistrate to the Special Court. As rightly contended by the learned counsel for the petitioner, the said provision gives power to the learned Magistrate to commit a case when the learned Magistrate is of the opinion that the said case is exclusively triable by the Court of Sessions. The case which is now pending before the learned Magistrate is triable by himself and not by the learned Sessions Judge.

7. In the case on hand, it is not in dispute that both the cases, one which is pending before the learned Magistrate and one which is pending before the Special Court arises out of a case and counter case. In such a situation, it is useful to refer to the decision of the Hon'ble Apex Court in the case of 'State of M.P. vs. Mishrilal and



others' reported in (2003) 9 Supreme Court Cases 426 relied upon by the learned counsel for petitioner. In the said decision, the Apex Court has referred to a decision in Nathi Lal vs. State of U.P. reported in 1990 Supp SCC 145, wherein it has been held as under:

“the fair procedure to adopt in a matter like the present where there are cross-cases, “is to direct that the same learned judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must proceed to hear the cross-case and after recording all the evidence, he must hear the arguments but reserve the judgment in that case. The same learned judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in the particular case. The evidence recorded in the cross-case cannot be looked into nor can the judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been



placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same learned judge one after the other.”

8. The above settled principles of law in deciding the case and counter case has not been disputed by the learned counsel for respondent. In plethora of judgments it is held that a case and a counter case have to be tried together by the same court irrespective of the nature of offences involved. The rationale behind this is to avoid conflicting judgments over the same incident, as held in the above noted decision. That being so, the prayer made by the learned counsel for the petitioner in this petition requires to be allowed. Hence, the following:

ORDER

The petition is allowed.



The case pending in C.C.No.23250/2018 on the file of the Court of II Additional Chief Metropolitan Magistrate, Bengaluru City is hereby transferred to the Court of LXX Additional City Civil and Sessions Judge, Bengaluru City.

The learned II Additional Chief Metropolitan Magistrate, Bengaluru City is directed to commit C.C.No.23250/2018 pending on its file to the Court of LXX Additional City Civil and Sessions Judge, Bengaluru City.

The learned Sessions Judge/Special Judge shall try both the cases, in accordance with law.

**SD/-
JUDGE**

HB
List No.: 1 Sl No.: 16