

Santhosh Vs. State of Kerala

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Court : Kerala

Decided On : Jun-26-2006

Reported in : 2006(3)KLT439

Judge : K.P. Balachandran, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 177 to 185, 407, 407(1), 407(2), 407(3), 407(4), 407(5), 407(6), 407(7), 407(8), 407(9), 408, 408(1) and 408(3)

Appeal No. : Unnumbered Tr.P.(Crl.) of 2006

Appellant : Santhosh

Respondent : State of Kerala

Advocate for Def. : P.M.A. Kalam, Public Prosecutor

Advocate for Pet/Ap. : V.K. Sunil, Adv.

Disposition : Petition rejected

Judgement :

ORDER

K.P. Balachandran, J.

1. This Transfer Petition (Crl.) is one filed under Section 407 of the Criminal Procedure Code for a direction being given to the Judicial First Class Magistrate, Vaikom to commit C.C. No. 192/2004 pending on the file of his Court to the Sessions Court, Kottayam Division for trial. It is submitted that Section C. No. 83/2006 on the file of the Additional Sessions Court (Adhoc-I), Kottayam, is counter case to C.C. No. 192/2004.

2. This unnumbered transfer petition has come up before me consequent on the note made by the Registry that a transfer petition seeking for committal of a criminal case to the sessions division has first to be moved before the concerned Sessions Court and unless such an application has been rejected by the Sessions Court, no application can be filed before the High Court in view of proviso to Section 407(2) of the Criminal Procedure Code.

3. Counsel for the petitioner submits that Section 408 of the Criminal Procedure Code deals with power of Sessions Judge to transfer a criminal case pending on the file of any of the criminal courts in his Sessions Division to another criminal court within his sessions division but that power does not include a power to direct a Magistrate to commit a case for trial and that power, according to him, is vested expressly in the High Court only, in view of Section 407(1)(iii) of the Criminal Procedure Code. According to him, the prayer in this transfer petition being not to transfer a case but for a direction to commit the case to the Sessions Court and that remedy is available only by invoking Section 407(i)(iii), the nomenclature of the petition as transfer petition (Crl.) is immaterial but is used only in view of the wordings of Section 407 conferring power on High Court and that the relief actually desired is one mentioned under Section 407(1)(iii) of the Criminal Procedure Code.

4. It is submitted by Public Prosecutor Sri. P.M. A Kalam that Section 408 of the Cr.P.C. by reason of Section 408(3) has conferred the power the High Court is having under Section 407(1), on a Sessions Court in all matters concerning cases within its sessions division as the wording of Section 408(3) is that the provisions of Sub-sections (3), (4), (5), (6), (7) and (9) of Section 407 shall apply in relation to an application to the Sessions Judge for an order under Sub-section (1) as they

apply in relation to an application to the High Court for an order under Sub-section (i) of Section 407, except that Sub-section (7) of that section shall so apply as if for the words 'one thousand rupees' occurring therein, the words 'two hundred and fifty rupees' were substituted.

5. Counsel for the petitioner submits that if such a view is taken, Section 407(1)(iii) provides that whenever it is made to appear to the High Court that circumstances specified in (a) to (c) in Section 407 exists the High Court is given the power vide Clause (i) thereof to order that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence, and offences described under Sections 183 and 185 are obviously not offences in relation to which a Sessions Judge can pass orders, as Section 183 deals with offences committed on journey or voyage; that in the course of performing a journey, journey might have been performed through the territorial limits of jurisdiction of several sessions divisions and in case cognizance is taken by two sessions divisions for any reason what so ever, one of the sessions courts will not be able to take a decision in the matter and similarly when the Government has directed that any cases or class of cases committed for trial in any district may be tried in any sessions division, power for transfer can be exercised only by the High Court by reason of Section 407(1)(i) of the Criminal Procedure Code and not by the Sessions Court of any sessions division.

6. The argument is apparently sound, but all the same it has to be observed that Section 408(1) provides specifically power of transfer to a Sessions Judge but that power is given only in relation to criminal cases in his sessions division. When so interpreted, there will not be any anomaly in holding that the Sessions Judge is having power for passing orders under Sub-section (1) of Section 408 of the Cr.P.C. as they apply in relation to an application to the High Court for an order under Sub-section (1) of Section 407 with the only exception that Sub-section (7) shall apply with the changes specified in Section 408(3) of the Code Criminal Procedure. In that event, when application of Section 407(1)(i) is in relation to matters falling under Section 183 and 185 which is not exclusively within the sessions division of the concerned Sessions Judge, he will not be exercising

jurisdiction as that is not conferred on him under Section 408(1) of the Criminal Procedure Code.

7. In the above view, I hold that when an application praying for committal of a criminal case to the sessions division for simultaneous trial with another sessions case pending in that Sessions Division is filed on the ground that the criminal case pending before the Magistrate is one to be tried as a counter to the sessions case pending before the sessions court, it is a relief which can be prayed for before the concerned sessions court under Section 408(1) read with Section 407(1)(iii) of the Cr.P.C. Consequently, therefore, proviso to Section 407(2) of the Cr.P.C creates a bar for an application being filed directly before the High Court for the relief of committal of a criminal case from the Magistrate's court to the sessions court without obtaining orders rejecting an application for such relief from the Sessions Judge of that Sessions Division. The objection raised by the Registry is hence tenable and consequently the Transfer Petition does not require to be numbered and entertained.

8. In the result, I reject the unnumbered Transfer Petition (Criminal).

Issue copy of this order to the counsel for the petitioner immediately.

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