

Dr. Subramaniam Swamy

vs

Ramakrishna Hegde

Transfer Petition (Civil) No. 338 of 1989

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

18.10.1989

JUDGMENT

AHMADI, J. -

1. Dr. Subramaniam Swamy, the defendant in Suit No. 945 of 1989 pending on the original side of the Bombay High Court, has filed this petition under Section 25 of the Code of Civil Procedure, 1908 ('the Code' hereinafter) read with Order XXXVI-B of the Supreme Court Rules, 1966, praying for the transfer of the aforesaid suit from the Bombay High Court to any civil court in Karnataka, preferably the City Civil Court at Bangalore, on the ground of forum non-convenience.

2. The respondent Shri Ramakrishna Hegde has filed the aforesaid suit in the Bombay High Court claiming a sum of Rupees one crore by way of damages for injury caused to his reputation by the publication/imputation of certain alleged defamatory statements made by the petitioner at a Press Conference held in New Delhi on January 10, 1989 which was attended by several members of the press and medial specially invited to the said conference. The allegation in the plaint is that the petitioner levelled several accusations against the respondent at the said Press Conference which were widely circulated/reported in the newspapers of January 11, 1989. These allegations have been catalogued in clauses (a) to (p) of paragraph 4 of the plaint. It is also alleged that the petitioner had also issued a written statement containing allegations set out in clauses (q) to (y) of paragraph 5 of the plaint and followed it up by further similar allegations made on January 12, 1989 and January 27, 1989, all of which are per se defamatory. We need not set out the allegations forming the basis of the suit as they are not relevant for the disposal of this petition. Suffice it to say that the suit filed by the respondent in the Bombay High Court is for damages for injury caused to his reputation.

3. The petitioner is a politician who is serving his fourth term as a Member of Parliament and is presently a Member of the Rajya Sabha having been elected to that office on a Janata Party ticket some time in March, 1988. He claims to have served on various Investigative Committees of Parliament, to have received his Doctorate from the Harvard University in USA where he later taught for almost a decade and to have published more than 150 books, articles and research papers on various aspects of Indian policy including economic policy of the country. On the account of this background, contends the petitioner, he was able to understand, analysed and expose the details of the respondents various acts of corruption, favoritism and nepotism committed during his tenure as a Chief Minister of the State of Karnataka, at the Press Conference of January 10, 1989. In paragraph 8 of the petition the petitioner states that he "accepts" the publication of the allegations complained of by the respondent". It is thus seen that the factum of publication of the allegations is not in dispute.

4. The petitioner, however, contends that the most appropriate place for the trial of the suit filed by the respondent is the State of Karnataka where the various acts complained of were committed by the respondent from time to time during his tenure as the Chief Minister of the State. The grounds in support of the petitioner's contention may be summarised as follows : the petitioner's father maintains a family house in Bangalore; all the events that provide the defence to the litigation took place in Karnataka at Bangalore; the entire documentary evidence touching the alleged acts being in official files and in private custody would be easily available in Bangalore; most of the witnesses who are in know of the respondents wrongs are residents of Karnataka, more particularly Bangalore, the discovery and inspection of documents can be conveniently had in Bangalore where they are available; the evidence pertaining to the telephone tapings done at the behest of the respondent would be available in Karnataka, Bangalore and since the people of Karnataka are vitally interested in the outcome of this litigation, it is essential that the suit should be tried in Karnataka and not in Bombay. It is further alleged that if the respondent is keen on vindicating his honour he should have no objection to the transfer of the suit to a civil court in Bombay where the court calendars are clogged because of heavy backlog and a similar suit filed by Shri A. R. Antulay, the ex-Chief Minister of Maharashtra in 1982 has still not reached hearing. According to him, having regard to the nature of the respondent's suit, it is doubtful if the Bombay High Court would permit it to jump its place in the queue. It is lastly alleged that since the respondent is admittedly a resident of Bangalore and usually divides his time largely between New Delhi and Bangalore he should have no objection to the trial of the suit in the State of Karnataka. On the other hand if the suit is not transferred as prayed the petitioner will be considerably handicapped in his defence as both oral and documentary evidence will not be easily available. The petitioner, therefore, contends that it is necessary to order transfer of the case to meet the ends of justice.

5. The respondent has filed his counter opposing the petition. He contends that the petitioner having aligned himself with the ruling party at the Centre is indulging in making intemperate, slanderous and false allegations against him with a view to maligning him and advancing the political interest of the ruling party at the centre. According to him the suit in the Bombay High Court is delayed as the petitioner has failed to file his written statement to the suit. After he files the written statement, a summons for directions can be taken out and a request to expedite the suit can be made to the High Court; if the petitioner is sincere in his profession, he should join the respondent in requesting the High Court for an early hearing of the suit. He further states that this Court can also direct the Bombay High Court to hear and dispose of the suit within a period of six months from the date of the order. According to the respondent it is not necessary to transfer the suit from the Bombay High Court to a court in Karnataka merely on the ground that the latter court will be able to dispose of the suit more expeditiously having regard to comparatively less pressure of work. As regards the allegation that the petitioner's father maintains a family house in the state of Karnataka, the respondent contends that the petitioner normally makes frequent visits to Bombay where his in-laws have a comfortable home at Nepean Sea Road, Bombay. The respondent further contends that being the dominus litis he was entitled to choose the forum and no valid grounds have been made out in the petition for the transfer of the suit. The respondent, therefore, prays that the petition should be dismissed with costs.

6. The petitioner has filed his rejoinder to the respondent's counter. He contends that the respondent has not made a serious attempt to counter the grounds on which the transfer petition is founded. He denies the allegation that he has aligned himself with the ruling party at the Centre and is deliberately making intemperate, slanderous and false accusations against the respondent with a view to advancing the political interest of the said party. On the question of delay in filing the written statement to the suit he contends that he received the summons on April 7, 1989 requiring

him to appear before the Judge in chambers on July 25, 1989. He states that on enquiry he discovered that there was a long queue of matters listed for directions on that date and he was told that his matter was not likely to reach even for preliminary directions in the current year. He states that his written statement is ready but he has not filed it as his suit is not listed for directions. He has denied the allegations that his visits to Bombay are more frequent than his visits to Bangalore. While admitting the fact that he has a place to stay in Bombay he emphasises that his home is in Delhi and his father's home is in Bangalore and since the events in question had taken place in Banhalore, he considers the Karnataka courts to be the natural and proper forum for the trial of the suit. According to him while the respondent had made the choice of the forum by instituting the suit at Bombay, Section 25 of the Code empowers this Court to transfer the suit to Karnataka to meet the ends of justice. He therefore, contends that this court should exercise its discretion in the interest of justice and transfer the case to Karnataka where the events complained of had taken place, where the documentary evidence is available in public records and where the witnesses of the alleged transactions ordinarily reside.

7. The present, Section 25 of the Code was inserted by Section 11 of the Code of Civil Procedure (Amendment) Act, 1976. The relevant part of the Section with which we are concerned reads as under :

"25. (1) On the application of a party and after notice to the parties and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other civil court in one State to a High Court or other civil court in any other State."

8. Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on receipt of a report from the judge trying or hearing the suit that there existed reasonable grounds for such transfer provided that the State Government of the State in which the other High Court had its principal seat consented to the transfer. The present Section 25 confers the power of transfer on the Supreme Court and is of wider amplitude. Under the present provision the Supreme Court is empowered at any stage to transfer any suit, appeal or other proceeding from a High Court or other civil court in one State to a High Court or other civil of another State if it is satisfied that such an exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties of any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The parliament has, therefore, invested this Court with the discretion to transfer the case from one court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude - for the ends of justice - have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objecting the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer

of the case must be tested on this touchstone.

9. The learned counsel for the respondent invited our attention to the observations of this Court in *Maneka Sanjay Gandhi v. Rani Jethmalani* ((1979) 4 SCC 167 : (1979) 2 SCR 378). In that case the petitioner figured as an accused in the prosecution launched against her and another by the respondent for an offence of defamation in the Court of Metropolitan Magistrate, Bombay. This Court was approached for the transfer of the criminal case from Bombay to Delhi. While declining the request for transfer this Court observed as under : (SCC p 169, para 2).

"Assurance of a fair trial is the first imperative of dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

10. Counsel for the respondent pointed out that mere convenience of the petitioner and absence of likelihood of prejudice to the respondent should not weigh with the court in directing the transfer of the suit from the Bombay High Court to a civil court in Karnataka. We have already emphasised that the paramount consideration for transfer of the case under Section 25 of the Code must be the requirement of justice. If the ends of justice so demand, the case may be transferred under this provision notwithstanding the right of dominus litis to choose the forum and considerations of plaintiff's convenience, etc., cannot eclipse the requirement of justice. Justice must be done at all costs, if necessary by the transfer of the case from one court to another. That is why in *Union of India v. Shiromani Gurudwara Parbandak Committee* ((1986) 3 SCC 600 : 1986 SCC (Cri) 348 : (1986) 3 SCR 472) this Court while sounding a note of caution that the power must be exercised with circumspection observed that the court should not hesitate to act if the ends of justice so demand in an appropriate case.

11. In the light of the principle enunciated above, we may now consider the case before us. On a bare perusal of the allegations set out in clauses (a) to (p) of paragraph 4 and clauses (q) to (y) of paragraph 5 of the plaint, which from the basis of the suit, it is evident that the charges of corruption, favouritism and nepotism leveled against the respondent mainly concern the allotment of lands situate in Bangalore and other parts of Karnataka at throw away prices to his close relatives and favoured few besides non-resident Indians. In substance the allegation is that the respondent and his family members pocketed more than Rs. 300 crores through fraudulent deals in lands situate in Bangalore and other parts of Karnataka. There can, therefore, be no doubt that most of the oral as well as the documentary evidence regarding the alleged scandalous deals would be available in Karnataka, more particularly in Bangalore, and not at Bombay. If the trial proceeds at Bombay, voluminous evidence will have to be carried to Bombay and several witnesses may have to travel to Bombay to give evidence. Apart from the inconvenience likely to be caused to the witnesses, the petitioner would also be required to incur substantial travel expenses to secure the presence of the witnesses in view of Order XVI Rule 19 of the Code. And yet, witnesses may be reluctant to travel

the long distance to Bombay. Considerable difficulty may also be experienced in securing discovery and inspection of documents. As the petitioner does not deny the publication of the allegations complained of in the plaint, the burden of establishing his defence to the suit will be on him and he may be required to examine a number of witnesses to discharge the same. We have, therefore, no doubt that the petitioner would-be handicapped in his defence to the suit if the suit is tried in Bombay. The ends of justice, therefore, demand that the suit be transferred from the Bombay High Court to the City Civil Court, Bangalore, where most of the documentary evidence and the majority of the witnesses are available.

12. The respondent in paragraph 20 of the plaint states that since "the impugned allegations have been published throughout the nation, including Bombay", the Bombay High Court has jurisdiction to entertain and try the suit. The jurisdiction of the Bombay High Court is, therefore, invoked solely on the ground of publication of the impugned allegations. It is not the respondent's case that these allegations had not been published in Karnataka State or in Bangalore where the respondent ordinarily resides. This also becomes clear from his address given in the cause title of his plaint.

13. It is not suggested by the respondent in his counter nor was it contended by his counsel that the transfer of the suit will result in substantial prejudice to the respondent. Since the respondent ordinarily resides in Bangalore and was the Chief Minister of Karnataka during the period the various acts of which he is accused took place, the impact of the accusations would be as much if not more on the readers of Bangalore. There would, therefore, be no dearth of readers in Bangalore who may have read the offending matters. We are, therefore, of the opinion that no prejudice, much less substantial prejudice, would be caused to the respondent if the suit is transferred as prayed.

14. It must however be mentioned that the learned counsel for the respondent argued that the petitioner is seeking transfer of the suit to Bangalore so that he may be able to further defame the respondent. In this connection he laid stress on the averment in the petition that the suit should be tried in Bangalore as the people of Karnataka are vitally concerned in the outcome of the litigation. It cannot be denied that the people of that State are indeed vitally interested in the litigation besides the parties themselves but we do not think the petitioner's request can be spurned on that ground. Besides in these days of prompt publicity, the apprehension of the learned counsel in this regard appears to be misplaced. We, therefore, do not see any merit in this contention.

15. In the result the petition succeeds. Suit No. 945 of 1989 (Rama Krishna Hegde v. Dr. Subramaniam Swamy) pending on the original side of the Bombay High Court is hereby transferred to the City Civil Court, Bangalore for trial and disposal in accordance with law from the stage at which it is presently pending. The Bombay High Court will transmit the record of the suit to the City Civil Court, Bangalore within four weeks from the receipt of the order of this Court. Parties will bear their own costs.

</html