

SUPREME COURT OF INDIA

Mrudul M. Damle

Vs.

C.B.I.New Delhi

(T.S. Thakur)

10.05.2012

JUDGEMENT

T.S. THAKUR, J.

1. In this petition under Section 406 of the Code of Criminal Procedure, 1973, the petitioners pray for transfer of Criminal Case No. 45 of 2008 pending in the Court of Special Judge, CBI Cases, Rohini Courts, New Delhi to the Court of Special Judge, CBI Cases, Court of Sessions at Thane, Maharashtra on the ground of convenience of the parties and the witnesses cited in the charge sheet by the prosecution.

2. Petitioners are husband and wife. While petitioner No.2-husband is currently posted as Assistant Commissioner, Central Excise, Customs and Service Tax at Vapi, Gujarat, petitioner No.1-wife is practicing as a Chartered Accountant in the State of Maharashtra. Both the petitioners are facing prosecution in Criminal Case No.45 of 2008 for offences punishable under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 IPC. The said case was registered on 14th July, 2005 against the petitioner-husband on the basis of recovery of cash and other property in the course of searches conducted at his houses in New Delhi and Thane. The bank locker in the name of the petitioner No.1-wife was also seized in the course of the said search operations.

3. The prosecution case, it appears, is that the petitioner No.2-Milind Purushottam Damle while posted as Assistant Commissioner, Central Excise, Customs and Service Tax at New Delhi, has amassed assets disproportionate to the known sources of his income in his name and in the name of his family during the period 1.4.2000 to 2.2.2005. Upon completion of the investigation a charge-sheet was filed against the couple in which the prosecution charged the husband with the

commission of offences punishable under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 while the wife was accused of abetment of the said offence punishable under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 IPC. The charge-sheet in question was initially filed before the Special Judge, CBI cases, Patiala House, New Delhi but subsequently transferred to the Court of Special Judge, CBI cases, Rohini, New Delhi. The charge-sheet enlists as many as 92 witnesses to prove the prosecution case. It is not in dispute that 88 out of the said 92 witnesses are from the State of Maharashtra, most of them being either from Thane, Mumbai or Navi Mumbai districts while some are from Pune or Satara districts of that State. The remaining 4 witnesses cited at serial nos.62, 68, 91 and 92 of the charge-sheet are from Delhi. Two of the said four witnesses are said to be no longer in Delhi. The petitioners allege that they have been regularly attending the Court in Delhi ever since the charge-sheet was filed but not much progress has been made towards the conclusion of the trial so far. Petitioner No.1, who happens to be a practising Chartered Accountant in Thane, has apart from her professional commitments, responsibility towards her mother who is aged 75 years and who stays with her. Appearance of the said petitioner in Delhi would, therefore, cause inconvenience to her on personal, professional and even the family front.

So also petitioner No.2 who is currently posted at Gujarat finds it extremely inconvenient to travel all the way to Delhi on every date of hearing. The petitioners assert that transfer of the case from Delhi to Thane would, in the above circumstances, not only be convenient to the two accused persons facing the trial but also to the witnesses cited by the prosecution who shall find it easier to appear for their deposition at Thane rather than travelling all the way to Delhi.

4. The petition has been opposed by the respondent who has filed a counter-affidavit sworn by Sr. Supdt. of Police, ACU-IV, CBI, New Delhi, in which the respondent has tried to justify the filing of the chargesheet in Delhi on the ground that petitioner No.2 was during the check period i.e. 1.4.2000 to 2.2.2005 posted at Central Excise, New Delhi as Assistant Commissioner w.e.f. 19th December, 2002 till the registration of the FIR.

The counter-affidavit does not however dispute the fact that 88 out of 92 witnesses cited by the prosecution are from Maharashtra.

5. We have heard learned counsel for the petitioners and Mr. H.P. Rawal, Additional Solicitor General for the respondent. Section 406 of the Cr.P.C.

empowers this Court to transfer cases from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court whenever it is made to appear to this Court that an order to that effect is expedient for the ends of justice. The source and the plentitude of the power to transfer are not disputed before us by Mr. Rawal, counsel appearing for the respondent. Even otherwise as observed by this Court in *Dr. Subramaniam Swamy v. Ramakrishna Hegde* [1990] INSC 200; (1990) 1 SCC 4, the question of expediency depends upon the facts of each case, the paramount consideration being the need to meet the ends of justice.

6. The material facts relevant to the determination of the question of expediency are not in dispute inasmuch as the respondent do not dispute that the chargesheet enlists 92 witnesses, 88 out of whom are from outside Delhi and from different places in Maharashtra. It is also not in dispute that petitioner No.1 is a Chartered Accountant practising in Thane, petitioner No.2 who is the only other accused in the case who is currently posted at Vapi in the State of Gujarat which is in comparison to Delhi closer to Thane. It is in the light of those admitted facts obvious that the trial in Rohini Court at Delhi would be inconvenient not only to the accused persons but also to almost all the witnesses cited by the prosecution except 4 who may be in or around Delhi. The case is even otherwise not Delhi centric in the true sense inasmuch as the only reason the FIR was registered in Delhi was the fact that petitioner No.2 was posted in Delhi during a part of the check period.

7. Mr. Rawal no doubt argued that a transfer of the case outside Delhi will cause prejudice to the respondent but was unable to show how that would be so. Mr. Rawal had in fact taken time to examine whether the list of witnesses could be suitably pruned to expedite the conclusion of the trial. But after taking instructions, Mr. Rawal submitted that it would not be possible at this stage to make any such statement, and rightly so, because it is only the public prosecutor who can take a call on that aspect after the trial starts, depending upon how the facts sought to be proved are seen by him or have been proved.

8. In *Abdul Nazar Madani v. State of Tamil Nadu*, (2000) 6 SCC 204, this Court while dealing with a prayer for transfer of the criminal case from one Court to other emphasized the importance of fairness of a trial and observed that while no universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case, convenience of the parties including the witnesses to be produced at the trial is a relevant consideration. This Court observed:

7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.

9. Similarly, in *Shree Baidyanath Ayurved Bhawan Pvt. Ltd. v. State of Punjab and Ors.* (2009) 9 SCC 414, this Court held that the convenience of the parties including the witnesses to be produced at the trial is a relevant consideration while directing transfer of criminal case from one Court situated in one State to another situated in another State.

10. In *Mrs. Sesamma Phillip v. P. Phillip* (1973) 1 SCC 405, which happened to be a matrimonial case, a five-Judge Bench of this Court transferred a criminal case on the ground of safety of the women-petitioner from Delhi to Durg. So also in *Captain Amarinder Singh v. Prakash Singh Badal* (2009) 6 SCC 260, this Court held that an impartial trial and convenience of the parties & witnesses are relevant considerations for deciding a transfer petition. In *Jayendra Saraswathy Swamigal v. State of Tamil Nadu* (2005) 8 SCC 771, this Court transferred a case from Kanchipuram to Pondicherry having regard to the convenience of the prosecuting agency and the language in which almost all the witnesses had to depose before the Trial Court.

11. In the light of the above decisions and the fact that CBI is fully equipped with an office at Bombay and a Court handling CBI cases is established at Thane also,

we see no reason why the transfer of the case would cause any hardship to the prosecution especially when searches which have been relied upon by the prosecution have been conducted at Thane in which the prosecution claims to have discovered a part of the assets allegedly acquired by the petitioners. Reliance placed by Mr. Rawal upon the decision of this Court in *Bhiaru Ram and Ors. v. CBI* (2010) 7 SCC 799, is of no assistance to him. In *Bhiaru Rams* case (supra) the main accused had not filed for transfer of the case and the number of witnesses cited were not so large as in the present case nor were bulk of the witnesses located in the State to which the case was sought to be transferred. This Court also had noticed the serious apprehensions regarding the fairness of the trial keeping in view the fact that the accused was an influential person. So also the decision in *Nahar Singh v. Union of India* (2011) 1 SCC 307, relied upon by Mr. Rawal was dealing with a totally different fact situation. The prayer for transfer in that case was not based so much on the ground of convenience of the accused and the witnesses as it was on the independence of the Court before whom the matter was pending. This Court felt that transfer on that ground would be a reflection upon the credibility of not only the entire judiciary but also the prosecuting agency. That is not the position or the ground in the case at hand.

12. There is no gainsaying that a trial at Delhi in which witnesses are expected to travel from Maharashtra is bound to linger on for years.

Expeditious disposal of the trial is also a facet of fairness of the trial and speedy trial is infact a fundamental right as observed by this court in *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, Patna*[1979] INSC 35; (1980) 1 SCC 81. When witnesses from distant places are sought to be summoned, early conclusion of the trial becomes so much more difficult apart from the fact that the prosecution will have to bear additional burden by way of travelling expenses of the official and non-official witnesses summoned to appear before the Court.

13. In the result, we allow this petition and transfer Criminal Case No.45 of 2008 entitled *C.B.I v. Mrudul Milind Damle & Anr.* pending in the Court of Special Judge, CBI Cases, Rohini Courts, New Delhi to the Court of Special Judge, CBI Cases, Court of Sessions at Thane, Maharashtra. The record of the case shall be forthwith transferred to the transferee Court which shall take up the matter and dispose of the same as expeditiously as possible.