(2014) 11 DEL CK 0057

In the Delhi High Court

Case No : TR.P.(Crl) No. 49 of 2014 and Crl.M.A. 11365 of 2014

H.B. Chaturvedi APPELLANT

Vs

State RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 180, 181
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 467
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 1 AD 167 : (2015) 214 DLT 779 : (2014) 4 JCC 2955

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : Sanjeev Bhandari, Standing Counsel, R.K. Srivastava, Sundeep Goel, M.Z. Choudhary, Zahid Hussain and Neha Rajpal, Advocates, Vijay Aggarwal and Katyayini, Advocate for the Appellant; Isha Khanna, APP, Sanjeev Bhandari, Standing Counsel, R.K. Srivastava, Sundeep Goel, M.Z. Choudhary, Zahid Hussain and Neha Rajpal, Advocate for the Respondent

Judgement

Dr. S. Muralidhar, J.—This is a petition under Section 407 read with Section 482 of the Code of Criminal Procedure, 1973 (''Cr PC'') filed by the Petitioner, H.B. Chaturvedi, seeking transfer of 11 cases initiated against the Petitioner by Respondent No. 2, Central Bureau of Investigation (''CBI'') and three cases by Respondent No. 1, State through Delhi Police (''DP'') , to a single Court.

2. The Petitioner is stated to be 81 years old. The principal allegation against the Petitioner is that in connivance with the other accused, who are Respondent Nos. 3 to 22 in the petition, he caused financial losses to the banks and financial institutions by availing loans on fabricated documents and by committing fraud. According to the Petitioner, in the cases initiated by the CBI, the principal allegation is of availing of loans from the banks by the companies, and their directors, who are accused, by submitting false and bogus invoices. The further allegation is that the loans taken were for paying money to the non-existent supplier companies against the purported supply of machinery under the Term

Loan facilities. Subsequently, the funds were further diverted from the fictitious/ non-existent companies to the account of the Shamken Group of Companies.

3. The Petitioner has placed on record a chart showing the details of 11 CBI cases and three other criminal cases, i.e., FIR No. 702 of 2004 registered at Police Station (''PS'') Badarpur, FIR No. 89 of 2005 registered at PS Mandir Marg, and FIR No. 368 of 2006 registered at PS Okhla. The common offences in these fourteen cases are under Sections 120B, 420, 468 and 471 IPC apart from Sections 406, 409, 467, 511 IPC. In four of the CBI cases, since the allegations are against the bank officials as well, the offence under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (''PC Act'') has also been added.

4. The chart placed on record by the Petitioner show that the three of the CBI cases are pending before the Court of the Special Judge, Saket Courts, New Delhi; one is before the Court of the Special Judge, Patiala House Courts (PHC) ; five are before the Court of the Additional Chief Metropolitan Magistrate (''ACMM'') , Tis Hazari Courts, Delhi; one is before the Court of the ACMM, Dwarka Courts, Delhi. The three cases by the State arising out of FIR Nos. 702 of 2004, 89 of 2005 and 368 of 2006 are pending before the Court of the Chief Metropolitan Magistrate (''CMM'') , PHC. The Petitioner and Respondents 3 (Amit Chaturvedi) , 4 (Sanjay Chaturvedi) and 5 (Parveen Juneja) are common to all the 14 cases. The Petitioner has also pointed out that the accused in some of the FIRs are prosecution witnesses in certain others.

5. The Petitioner has also enclosed a chart showing that in the 11 CBI cases there are five common witnesses. These are, Amit Chaudhary, Sushil Kumar Jain, Jagdish Salwan, Kapil Aggarwal and Shyam Sunder Sharma. Companies belonging to the Shamken Group of Companies are arrayed as accused in most of the 14 cases.

6. The Petitioner states that Transfer Petition (Criminal) No. 357 of 2011 was dismissed by the learned District & Sessions Judge by order dated 3rd December 2012 on the ground that the cases were based on different transactions at different points of time and that the trial of all the cases by one Court would cause unnecessary harassment. The order further stated that "offences under the IPC are magisterial trial and in case the case pending before the Court of the learned ACMM is transferred to the Court of the learned Additional Sessions Judge (''ASJ'') , the accused is deprived of one right of appeal."

7. Mr. Vijay Aggarwal, learned counsel appearing for the Petitioner states that the Petitioner is seeking transfer of all the CBI cases pending before different Courts of Special Judges to one Court and all the other CBI cases pending before the Courts of different ACMMs to the Court of the CMM PHC.

8. The CBI has filed a reply to the petition detailing the allegations in the different cases. It is pointed out that the 14 cases pending against the Petitioner and other accused have different facts and evidence; they concern separate

conspiracies hatched during different periods of time and for cheating various banks. Mr. Sanjeev Bhandari, learned Counsel for the CBI, submitted that while some of the accused are common in one or two cases and five witnesses are common, there are many other witnesses in individual cases, who have nothing to do with the other cases. He further submitted that the cases are for the different conspiracies hatched by the Petitioner with different sets of co-accused persons, during different periods between 1997 and 2003 for causing wrongful loss to the different banks and financial institutions. He further submitted that Section 218 Cr PC mandates a separate charge and trial for distinct offences. Reliance is placed on the decision of the Supreme Court in Narinderjit Singh Sahni and Another Vs. Union of India and Others, . It is submitted that the present petition has been filed by the Petitioner only to delay the proceedings in the cases.

9. Learned counsel for the other accused/Respondents (other than Respondents 3, 4 and 5 who support the Petitioner) also expressed an apprehension that matters might be delayed if they are transferred to one or two Courts as prayed for by the Petitioner.

10. The Court has considered the above submissions. The first issue to be considered is whether it is in the interest of justice for this Court to exercise its powers under Section 407 Cr PC to transfer the cases. Section 407(1)(c) and (2) Cr PC which is relevant for the purposes of the present case, reads thus:

"407. Power of High Court to transfer cases and appeals.-(1) Whenever it is made to appear to the High Court-

(a) .....

(b) ....

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

(i) 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;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative;

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him."

11. A perusal of the details of the FIR in the 11 CBI cases and in the other three State cases shows that the pattern of the transactions and the manner of defrauding the financial institutions on the basis of the purported documents and availing of loans and diverting the funds to other entities is similar. While the Petitioner and Respondents 3, 4 and 5 figure as accused in all the cases, the companies who acted in connivance with them to defraud the financial institutions and banks differ.

12. The factors that require to be noticed for the purposes of the present petition in the context of Section 407(1)(c) Cr PC is that there are at least five common witnesses in the cases. It is not that these witnesses would have to come to depose in all the cases. They would be called as and when the cases where they are concerned are taken up. This can easily be regulated by the Court concerned.

13. In A.E. Premanand v. Escorts Finance Limited (2004) 13 SCC 527 the Supreme Court held that since there are three complaints of dishonour of cheques arising out of the same transaction and filed in three different places it would be in the interest of justice that they be transferred to be tried by one Court. In Ayyannar Agencies and Another Vs. Sri Vishnu Cement Ltd. and Another, , the Supreme Court was dealing with a case where five complaints against the Petitioners were pending in Chennai and for the same offence under the same Act there was another complaint in Hyderabad. Transfer of the case from Hyderabad to Chennai was ordered in the interest of justice and "for the convenience of conducting the trial and disposal of all the cases." Likewise in Global Infrastructure & Technologies Ltd. v. G.K. Builders (2005) 12 SCC 427 and Vikram Tractors and Others Vs. Escorts Ltd. and Another, , Negotiable Instruments Act complaint cases in different cities were transferred to one court.

14. One factor that should weigh with the Court when considering a prayer for transfer of cases under Section 407 Cr PC is whether such transfer of cases from different courts to one Court will delay the proceedings. The nature of the case, the number of witnesses involved and importantly the stage at which the cases are will be important factors for the Court to consider. Here it is seen that nine of the CBI cases are at the stage of arguments on charge. In the case of the CBI pending before the learned ACMM, Tis Hazari Courts (743/1 RCBD1/2009/ E/0001) the accused have been summoned. In another case of the CBI (RCBD1/ E/0002) the accused are yet to be summoned. The transfer of the above cases will, therefore, not cause prejudice to any of the parties if they are ordered to be continued from the respective stages at which they are.

15. As far as the CBI cases pending in the Courts of the ACMM, if they are directed to continue from the stage at which they are when transferred to one Court of the CMM that would will take care of the apprehension that in the cases

triable by the CMM/ACMM, if transfer to a court of a higher jurisdiction is directed, the accused might be deprived of one tier of appeal.

16. As far as the other accused are concerned, only those in the cases concerned will be required to be present on any given date. This aspect can easily be managed by the Court concerned so that all the accused in the cases need not be present on all the dates. Likewise, only those witnesses should be called who are concerned with the cases listed on a given day. Where a large number of cases involving the same accused and similar nature of charges, it might be expedient for the witnesses, the parties and even the Court if the cases are transferred to one or two courts. The Court is satisfied that the transfer of the cases in the manner proposed to be ordered by this Court satisfies the requirement of Section 407(1)(c) Cr PC, viz., that it "will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice."

17. Although the Petitioner has invoked Section 220(1) Cr PC and other provisions to urge that all the cases form part of the ''same transaction'' and satisfy the requirements of a joint trial, this Court does not consider it necessary at this stage to express any view thereon. It is made clear that the transfer ordered by this Court of the cases should not be construed as an order for the joint trial or consolidation of the cases. As and when any of the parties make an application in that regard it will be for the court to which the cases have been transferred to consider such prayer on its merits.

18. Consequently, it is directed that

(i) the following cases pending before the Court of Mr. Sanjeev Jain, learned Special Judge, Saket Courts, i.e.,

(a) RC.BD1/2008/E/0010 (39/12)

(b) RC.BD1/2009/E/0013 (40/12) ,

(c) RC.BD1/2009/E/0008 (38/12)

shall be transferred to the Court of Ms. Swarna Kanta, learned Special Judge, CBI, PHC before which Court RCBD1/2009/E/0010 (01/14) is pending; and

(ii) The above cases will be listed on 15th December 2014 in the Court of Ms. Swarna Kanta, learned Special Judge, CBI, PHC New Delhi and will proceed from the stage at which each of them is at present.

(iii) where any party is unrepresented a fresh notice be issued to such party

(iv) all parties will co-operate with the Court in facilitating the expeditious disposal of the cases without seeking unnecessary adjournments.

(v) the following cases pending in the Court of Mr. Sudhanshu Kaushik, learned ACMM, Tis Hazari Courts, i.e.

(a) RC.BD1/2009/E/0005 (737/1) ,

(b) RC.BD1/2009/E/0001 (743/1) ,

(c) RC.BD1/2009/E/0006 (752/1) ,

(d) RC.BD1/2009/E/0006 (750/1)

(e) RC.BD1/2008/E/0009 (743/1)

(f) RC.BD1/E/0002 and

(g) RC.BD1/2009/E/0009 (322/10) pending in the Court of Mr. Satish Kumar Arora, learned ACMM, Dwarka Courts,

shall be transferred to the Court of Mr. Sanjay Khanag, learned CMM, PHC before which Court cases arising out of FIR No. 702 of 2004 registered at Police Station (''PS'') Badarpur, FIR No. 89 of 2005 registered at PS Mandir Marg, and FIR No. 368 of 2006 registered at PS Okhla are pending.

(vi) The cases at (v) (a) to (g) will be listed on 16th December 2014 in the Court of Mr. Sanjay Khanag, learned CMM, PHC and will proceed from the stage at which of them is and;

(vii) where any party is unrepresented a fresh notice be issued to such party;

(viii) all parties will co-operate with the Court in facilitating the expeditious disposal of the cases without seeking unnecessary adjournments.

19. The petition and pending application are disposed of in the above terms. Order be given dasti to learned counsel for the parties.

20. A certified copy of this order be delivered forthwith to the respective concerned Courts for compliance.

