

(2021) 09 TEL CK 0051

In the Telangana High Court

Case No : Transfer Criminal Petition No. 43 Of 2021

Kanurnuri Raghurama Krishna Raju Vs State Of Telangana

Date of Decision : 15-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 21

Code of Criminal Procedure, 1973 — Section 406, 407, 407(1)(a)

Citation : (2021) 09 TEL CK 0051

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Siddani Sri Venkatesh, learned counsel for the petitioner, and Mr. K. Surender, learned Special Public Prosecutor for CBI Cases.

2. This Transfer Criminal Petition is filed under Section - 407 of the Code of Criminal Procedure, 1973, to transfer CrI.M.P. Nos.421 and 640 of 2021 filed by the petitioner herein for cancellation of bail granted to respondent Nos.3 and 4 - accused Nos.1 and 2, in C.C. No.8 of 2012 pending on the file of the Principal Judge for CBI Cases, Hyderabad, to any other competent Court either in Hyderabad or Telangana.

3. Respondent Nos.3 and 4 are accused Nos.1 and 2 in C.C. No.8 of 2012 and they are on bail. The petitioner herein had filed two Miscellaneous Petitions viz., CrI.M.P. Nos.421 and 640 of 2021 in C.C. No.8 of 2012 to cancel the bails granted to respondent Nos.3 and 4 - accused Nos.1 and 2 in the said C.C. The said petitions were heard on 25.08.2021 and posted to today for orders.

4. While so, the petitioner herein has filed the present transfer criminal petition on 07.09.2021 seeking to transfer CrI.M.P. Nos.421 and 640 of 2021 from the Court of Principal Judge for CBI Cases, Hyderabad, to any other Court on the following grounds:

(i) The above said petitions were heard on 25.08.2021 and posted for orders. The media house owned by respondent No.3 - accused No.1 and his relatives

tweeted the following in their Twitter:

"CM YS Jagan bail petition was dismissed.

CBI Court held that there is no need to cancel the bail by considering the bail petitions filed by M.P. Raghurama Krishnam Raju.

The CBI Court rejected the contention of Raghurama Krishnam Raju that the witnesses are being influenced."

(ii) The learned Special Judge for CBI Cases, Nampally, Hyderabad, has permitted respondent No.4 - accused No.2 to travel abroad any time for a period of 15 days i.e., from 27.08.2021 to 15.11.2021, and the said order throws any amount of apprehension of the result in the above said Crl.M.Ps.

(iii) According to the petitioner, many Video Channels belonging to respondent No.3 - accused No.1 posted many videos about the final order in the said Crl.M.Ps. right from the date, on which the learned Principal Judge for CBI Cases, Hyderabad, ordered notice in the said petitions filed by the petitioners for cancellation of bail, but there was no order till date. Thus, the media channel belonging to accused No.1 and his relatives are unnecessarily interfering by trying to influence the learned Judge by extraneous and malicious considerations. The petitioner apprehends that the tweets and opinions in the videos posted by the media channel of accused No.1 will effect the dispensation of fair and impartial justice while the said petitions for cancellation of bail are decided.

5. Mr. Siddani Sri Venkatesh, learned counsel, would submit that the learned Judge has permitted respondent No.4 - accused No.2 to visit Dubai, Maldives and Indonesia, vide order dated 26.08.2021. The petitions filed by the petitioner seeking cancellation of bail granted in favour of respondent No.4 - accused No.2 were heard on 25.08.2021 and posted the same for orders on 15.09.2021. On the next day itself i.e., 26.08.2021, the learned Judge pronounced the orders in the petition filed by respondent No.4 - accused No.2, allowing him to visit Foreign Countries any time for a period of fifteen (15) days during the period from 27.08.2021 to 15.11.2021. The said orders of the learned Judge throws some amount of apprehension on the result in Crl.M.P. Nos.421 and 640 of 2021, and the said apprehension is reasonable, well-grounded and, therefore, he sought to transfer the said petitions from the Court of learned Principal Judge for CBI Cases, Hyderabad, to any other Court. In support of his submissions, he has relied upon the principle laid down in *Gurucharan Das Chadha v. State of Rajasthan* 1966 (2) SCR 678.

6. On the other hand, Mr. K. Surender, learned Special Public Prosecutor for CBI, would submit that the grounds, on which the present petition is filed seeking to transfer Crl.M.P. Nos.421 and 640 of 2021 from the Court of Principal Judge for CBI Cases, Hyderabad, to any other Court, are not well-founded and are not within the purview of Section - 407 of Cr.P.C. He would further submit that the learned Judge has already initiated the proceedings under the Contempt of

Courts Act, 1971, with regard to the tweet dated 25.08.2021. The learned Judge has passed the orders on merits by giving reasons granting permission to respondent No.4 - accused No.2 to travel abroad. The petitioner did not challenge the said order. There is no complaint against respondent No.4- accused No.2 with regard to violation of any conditions imposed by the trial Court while granting permission to travel abroad. The petitioner herein is neither a complainant, nor a witness in C.C. No.8 of 2012 and he is a third party. The trial Court is conducting trial on day-to-day basis following the guidelines issued by the Hon'ble Supreme Court in Ashwini Kumar Upadhyay v. Union of India W.P (C) No.699 of 2016, dated 04.11.2020. The apprehension expressed by the petitioner herein is only imaginary and not a reasonable one. It is not the case of the petitioner herein that the trial Court is not conducting trial in C.C. No.8 of 2012 in fair and transparent manner. Even then he has filed the present petition with a mala fide intention.

i) With the above submissions, the learned Special Public Prosecutor sought to dismiss the present petition.

7. In view of the above rival submissions, it is relevant to note that Section - 407 of Cr.P.C. deals with 'power of High Court to transfer cases and appeals', and for the purpose of deciding the lis involved in the present petition, the said provision is re-produced hereunder:

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(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,

....."

8. In the present case, the petitioner herein sought to transfer CrI.M.P. Nos.421 and 640 of 2021 from the Court of the Principal Judge for CBI Cases, Hyderabad, to any other Court on the apprehension that the trial Court may not pass orders in the said CrI.M.Ps. and, therefore, the said contention would fall within the ambit of Section - 407 (1) (a) of Cr.P.C. viz., fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto. Whether the said apprehension is reasonable, well-founded with substance or it is only imaginary is the issue which falls for consideration.

9. As stated above, the petitioner herein had filed CrI.M.P. Nos.421 and 640 of 2021 seeking to cancel the bail granted to respondent Nos.3 and 4 - accused Nos.1 and 2 in C.C. No.8 of 2012, on various grounds. The trial Court has heard the said petitions on 25.08.2021 and reserved for orders, and orders are going to

be pronounced today i.e., 15.09.2021. Even according to the petitioner, the message was tweeted on 25.08.2021, whereas he filed the present petition on 07.09.2021 with a delay of twelve (12) days. Moreover, the trial Court has already taken note of the said tweet and initiated contempt proceedings. The said fact is not disputed by the learned counsel for the petitioner.

10. With regard to the permission granted by the trial Court to respondent No.4 - accused No.2 that it had permitted accused No.2 to travel abroad on the very next day after hearing the arguments in CrI.P. Nos.421 and 640 of 2021; it is relevant to note that the trial Court has passed an order giving reasons. If the petitioner/prosecution was aggrieved by the same, they should have taken steps challenging the said order. It is also relevant to note that there is no complaint against respondent No.4 that he has violated the conditions imposed by the trial Court while granting permission to travel abroad. More importantly, the prosecution has not initiated any steps to challenge the said order. Therefore, according to this Court, the above said grounds raised by the petitioner and his apprehension that the trial Court may not pass orders in the said two petitions, which were heard and posted for orders, are not reasonable and are only imaginary. Moreover, there is no basis for the said apprehension expressed by the petitioner. The petitioner cannot seek transfer of CrI.M.P. Nos.421 and 640 of 2021 only on a mere apprehension. The apprehension should be reasonable, well-founded and there should be substance, whereas, in the present case, there is no substance or reasonableness in the apprehension expressed by the petitioner.

11. In *Abdul Nazar Madani v. State of Tamil Nadu* (2000) 6 SCC 204, the Apex Court held that 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 of the 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. It further held that 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, and 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. It further held that 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.

12. In *Maneka Sanjay Gandhi v. Rani Jethmalani* AIR 1979 SC 468, the Apex

Court held that assurance of a fair trial is the first imperative of the 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 imperilling, 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.

13. In *K. Anbazhagan v. The Superintendent of Police* (2004) 3 SCC 767, the Apex Court held that free and fair trial is sine qua non of Article - 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner.

14. Even, in *Gurucharan Das Chadha*¹, the Apex Court held that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It further held that it is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.

15. As discussed above, in the present case, the apprehension expressed by the petitioner herein, a third party to the proceedings in C.C.No.8 of 2012, is not reasonable and is not based on any substance. Moreover, the petitioner herein has filed the present petition with a delay of almost 12 days. Therefore, according to this Court, the petitioner is not entitled for any relief, much less the relief of transfer of CrI.M.P. Nos.421 and 640 of 2021 from the Court of Principal Judge for CBI Cases, Hyderabad, to any other Court, as sought by him. Thus, the petition fails and accordingly the same is liable to be dismissed.

16. In the result, the present Transfer Criminal Petition is dismissed.

As a sequel, the miscellaneous petitions, if any, pending in the Transfer Criminal Petition shall stand closed.