
(2013) 10 DEL CK 0290

In the Delhi High Court

Case No : Writ Petition (C) 5598 of 2013, C.M. No. 12403 of 2013

Mhmd. Shakeel

APPELLANT

Vs

The High Court of Delhi

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 326, 407
Explosive Substances Act, 1908 — Section 3, 4, 5
Information Technology Act, 2000 — Section 66
Penal Code, 1860 (IPC) — Section 121, 121A, 122, 123, 302
Unlawful Activities (Prevention) Act, 1967 — Section 16, 18, 20, 23

Citation : (2013) 10 DEL CK 0290

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Jawahar Raja and Sh. Rajat Kumar, for the Appellant; Gautam Khazanchi for Sh. Siddharth Aggarwal, Advocate for Resp. No. 1, Sh. Khyati Sharma for Ms. Sonia Sharma for GNCTD, Ms. Avnish Ahlawat, Sh. Nitesh Singh and Sh. Vaibhav Misra, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The present writ petition seeks the issuance of a writ of certiorari quashing the decision of the High Court of Delhi in its administrative jurisdiction, as conveyed by the Registrar (Vigilance) of the Court to all District and Sessions Judges, by Order No. 3999-4009/DHC/Gaz./G-1/2013, dated 3rd August, 2013 ("the impugned decision"). This decision mandates that all cases investigated by the Special Cell of the Delhi Police and being prosecuted anywhere in Delhi would stand transferred to the Court of the Additional Sessions Judge-02, Patiala House Courts, Delhi. Consequent to this, by the order of the District and Sessions Judge (HQs), Delhi, dated 6th August 2013 (No. 1586/28251-281/F.3(4)/ASJ/Gaz/13) transferred all such cases to the said court. The present writ petitioner's (hereinafter "Shakeel") challenge to these decisions stems from his trial (in S.C. 74-78/2009 before the Additional Sessions Judge,

Central, Tis Hazari Court, Delhi) which has also been transferred. Briefly, the ASJ, Tis Hazari Courts framed charges against Shakeel on 5th February, 2011, under Sections 121/121-A/122/123/302/307/323/427 read with 120B of the Indian Penal Code, Sections 3/4/5 of the Explosive Substances Act, 1908; Sections 16/18/20/23 of the Unlawful Activities (Prevention) Act, and Section 66 of the Information Technology Act, 2000. The trial commenced on 31st May, 2011, and from October, 2012 onwards the trial judge ordered that the case be listed every Wednesday, and December, 2012 onwards, that it be listed every Wednesday and Thursday of the month.

2. Shakeel seeks quashing of the impugned orders as regards his cases, on several counts. Learned counsel appearing for Shakeel, Mr. Raja, contended that more than 198 prosecution witnesses had already been examined and only 30-40 more witnesses remain to be examined. Such being the situation, argues counsel, the case ought to be allowed to proceed before the trial judge in the Tis Hazari Court itself. Moreover, learned counsel argues that throughout the course of the prosecution, several mala fide attempts had been made to subvert the process of law by attempting to influence witnesses in the case, and given that the trial judge who has presided over the case had been privy to, and been able to personally observe these attempts by the prosecution, the interests of justice demand that the case be allowed to proceed before the same trial judge, rather than transferring the matter under the impugned order. Accordingly, it is argued that the judge presently presiding over the trial is best equipped to conclude recording evidence in those proceedings and to adjudicate the innocence or guilt of the petitioner. To this end, the writ petition also points out, at paragraphs 8-9, several instances of alleged mala fides in the manner the prosecution has conducted itself, especially attempts to manipulate or influence public witnesses to depose against Shakeel. Moreover, it is contended that:

16...Transferring all these cases to a single court, that will then have to deal with cases that are part of its regular board of cases, apart from cases that have been assigned as a result of the order of this Hon"ble court, is likely to result in very significant delays in the trial and adjudication of cases against the petitioner.

3. Further, learned counsel admits that although Section 326 of the Code of Criminal Procedure, 1973 ("Cr.PC") permits appreciation of evidence by a successor judge (as would be the case here), it is argued that Section 326 represents the exception, and not the rule that is to be followed in criminal trials. This, it is argued, is more so when the trial is at an advanced stage and the recording of evidence is nearing the end. In aid of these submissions, counsel relied on two judgments of the Supreme Court: *Girish Pal Singh and Others etc. Vs. State of Rajasthan and Another*, and *Nirmal Singh and Others Vs. State of Haryana*,

4. Next, it was contended that the impugned decision causes prejudice to the petitioner, in regard to the speedy trial of the case and under the circumstances, ought to have been made after hearing him.

5. Learned counsel argues that even if the relevant considerations of delay and decision by the same judge are not to prevent a transfer in themselves, as a *via media* principle, those witnesses whose testimonies are in the process of the being recorded may be allowed to be recorded by the same judge without transferring the matter.

6. This Court notes, first and foremost, that the administrative power of the High Court to transfer cases in Courts falling within its jurisdiction inheres under Article 227 of the Constitution. As the Supreme Court noted in *Ranbir Yadav Vs. State of Bihar*, , this is its "plenary" power of superintendence, which entitles the High Court "to pass orders for administrative exigency or expediency", including the power to transfer cases (with this administrative power being distinct from the judicial power u/s 407, Cr.PC, both of which subsist together). Indeed, it is this very power that has been exercised in this case to transfer a specific class of cases, i.e. those cases investigated by the Special Cell, to one Court, for administrative reasons. Shakeel the petitioner, does not deny the amplitude of this power. Nor is there any allegation of the impugned transfer order being arbitrary or based on irrelevant considerations. The question that arises, therefore, is whether such a transfer can be quashed insofar as Shakeel's case is concerned. Pertinently, the impugned administrative order of the High Court transfers all such cases to the Additional Sessions Judge designated for this purpose, in the Patiala House Courts for cogent reasons of administrative efficiency, an attempt to resist such transfer based on an analysis of each individual case (and related questions of how many witnesses have been tried, whether a delay will result or not) would be contrary to the import of the transfer order itself. Indeed, at the very least, these are matters of discretion to be taken into consideration by the High Court acting in its administrative capacity while ordering the transfer of cases, rather than issues of positive rights that can be alleged by individual accused to impugn the transfer order as contrary to law. It is important to note here that an averment was made in the writ petition that Shakeel was kept in the dark about this decision to transfer the case, and that accordingly, as notice was not provided, the transfer is bad in law. However, this submission is insubstantial and cannot be accepted. The transfer order in this case is an administrative order under Article 227, rather than a judicial order u/s 407 of the Cr. PC, where notice is contemplated. Indeed, for an administrative action taken by the High Court, no such requirement of a notice can be accepted, nor has this been pursued by the learned counsel. In fact, as the Supreme Court noted in *Ranbir Yadav* (*supra*):

13...[s]o long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they co-exist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial power of

transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunity to the parties of a proper hearing...

7. Thus, the exercise of the administrative powers by the High Court in Order No. 3999-4009/DHC/Gaz./G-1/2013 is clearly permissible.

8. This brings the Court to the question of any prejudice caused to Shakeel's case specifically from such transfer order. Undoubtedly, the judge presently presiding over the trial possesses greater familiarity with the matter, and a transfer may create some delays in the new judge taking over the matter, these issues cannot, by themselves, vitiate the transfer. Indeed, if a contrary view were to be taken, most- if not all - transfer orders would be considered impermissible. In fact, Section 326 of the Cr.P.C. specifically contemplates the appreciation of evidence by a successor judge, and if required, a re-summoning of certain witnesses to allow for the new judge to be able to effectively decide the trial. If in fact there were any mala fides by the prosecution in this case, there is no reason to believe that the new judge who would preside over the case will not take due account of them. Indeed, to interdict the administrative power of the High Court to transfer a class of cases between courts under its supervisory jurisdiction with general concerns of individual cases (for example, delays, or a concern that the current judge is familiar with the matter) would unduly, and indeed, incorrectly, restrain the power of the High Court, and cannot be accepted.

9. The reliance placed on the decisions of the Supreme Court in Pal Singh and Nirmal Singh here are unhelpful, as in Pal Singh, the Supreme Court set aside the order of transfer by the High Court for lack of jurisdiction to make an inter-state transfer (with the observations that the trial had proceeded to the final stages being remarks made as obiter); and in Nirmal Singh, the case concerned a transfer order u/s 407, Cr.PC without notice to parties, which, as noted before, is not a requirement for orders made on the administrative side for the transfer of classes of cases between lower courts.

10. Under the scheme of the Constitution, it is the High Court alone which is entrusted with exclusive responsibility of overseeing administrative and judicial work of the Courts subordinate to it. This task includes the duty to ensure that work distribution amongst judges of various levels is optimized to ensure speedy resolution of trials, causes and appeals. As part of this power, it can re-organize and rationalize work in such subordinate courts. Various considerations are kept in mind; all geared to ensure speedy trial and dispute resolution. There is no dispute that the notification in question and the District Judge's consequential order was in bona fide exercise of that power. Given these circumstances, sans any overriding consideration, this Court is unable to locate any principled justification to say that a particular case or trial should continue on the file of a particular judge, because a large number of witnesses' depositions were recorded by him. Doing so would, to this Court's mind, be setting a dangerous precedent, fuelling similar demands for diverse considerations, adding to the

Court's already strained docket, a new class of litigation unnecessarily. In the light of the above discussion, this Court finds no reason to grant any relief. The writ petition is, therefore, dismissed along with pending application.