
(2013) 08 MP CK 0322

In the Madhya Pradesh High Court

Case No : Mis. Cr. Case No. 2837 of 2011

Pankaj Dandotiya

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407

Citation : (2013) 08 MP CK 0322

Hon'ble Judges : Brij Kishore Dube, J

Bench : Single Bench

Advocate : Anil Mishra, for the Appellant; Prabal Solanki, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Brij Kishore Dube, J.—Heard on the question of admission and perused the record. This petition u/s 407 of the Code of Criminal Procedure, 1973 (for short the "Code") is preferred by the petitioner herein/accused for transferring the Special Sessions Trial No. 49/07 pending before the Special Judge (under S.C., & S.T., Act), Gwalior to Morena.

2. The undisputed facts of the case are that the petitioner herein alongwith other co-accused were facing the criminal trial being the Special Sessions Trial No. 62/06 before the Special Judge (S.C., & S.T., Act), Morena. The complainant/Hemant Prasad Chaudhary filed a petition u/s 407 of the Code before this Court which was numbered as Mis. Cr. Case No. 3478/2006 for transferring the aforesaid special sessions trial from Morena to any other Court out of Morena District. Vide order dated 18/04/2007 passed by this Court, the petition was allowed and the Special Sessions Trial No. 62/06 was directed to be transferred from the Special Judge, Morena to the Court of Special Judge, Gwalior. The relevant paragraphs of the order reads as under:

8. Thus last two grounds appear without any base. However, the first ground is

an important factor in favour of the petitioner. Admittedly in the case, the allegation against the accused is of double murder. Not only in such serious cases but in every case, justice is not only required to be done, but more important is that it should be seen that it has been done. Not only the faith of the litigants, but of the public at large also in the courts of law, is paramount. Although, there appears nothing against the Presiding Judge of this case, however, considering the fact that one of the accused is a practising lawyer having aforementioned status and son of another accused is Additional Government Pleader at the same place, the petition deserves to be allowed for the ends of justice under clause (c) of 407(I) of Cr.P.C.,

On perusal of the cases cited on behalf of the accused being on different facts cannot fruitfully be utilized in favour of the accused persons.

9. Consequently, the petition is allowed.

10. The Special Sessions Case No. 62/06 is transferred from the Court of Special Sessions Judge, Morena to the Court of Special Sessions Judge, Gwalior at the same stage. Record of the case be sent to the transferee Court before 2.5.07. It is directed that all the accused persons will remain present in the transferee Court on 2.5.07. Copy of the order be sent forthwith to District Judge Morena and District Judge, Gwalior, Special Sessions Judge, Morena and Gwalior.

3. It is also not in dispute that now the petitioner and the other co-accused are facing the criminal trial bearing Special Sessions Trial No. 49/2007 before the Special Judge (under S.C., & S.T., Act), Gwalior.

4. Learned counsel for the petitioner submits that earlier petition was allowed by this Court on the ground that one of the accused, namely; Gopeshwar Dandotiya was a practising advocate at Morena and an influential person. Now, he had died, therefore, the ground on which the petition for transfer of the aforesaid special sessions trial was allowed is not available now to the complainant. Further, in the earlier petition, the allegations were levelled against the Presiding Officer by the complainant, but the Presiding Officer has already been transferred from Morena. Much emphasis has been laid on the fact that the trial is pending before the Special Judge, Gwalior since 3 1/2 years but no progress has been done in the trial. The three star witnesses are not coming forward before the Trial Court to adduce their evidence. The petitioner and the other co-accused persons are residents of Morena, therefore, looking to their hardship, the learned counsel prays for transfer of the case from Gwalior to Morena.

5. Learned Public Prosecutor, Shri Prabal Solanki vehemently opposed the application and submits that Rajeev Dandotiya who is son of the accused, Gopeshwar Dandotiya (since dead) is Additional Government Pleader at Morena. It is further submitted that one prosecution witness was examined at Morena on 02/06/2006 and seventeen witnesses on behalf of the prosecution have been examined by the Special Judge, Gwalior out of which, one of the star witnesses has also been examined. The record of the Trial Court has been called by this

Court, therefore, the trial is held up for want of the record. On these grounds, learned Public Prosecutor prays for dismissal of the petition.

6. I have considered the rival submissions made by learned counsel for the parties.

7. Admittedly, Rajeev Dandotiya who is son of the late accused, Gopeshwar Dandotiya is working as Additional Government Pleader at Morena. This is one of the reason why this Court earlier allowed the application for transfer of the special sessions trial from Morena to Gwalior, which is still going on.

8. From a perusal of the record of the Special Sessions Trial No. 49/2007, it is apparent that the trial of the case is being conducted by the Trial Court and as many as 17 prosecution witnesses have been examined. Unfortunately, the record of the Trial Court is requisitioned in the month of May, 2011 and tagged with this petition.

9. Learned counsel for the petitioner filed order dated 06/02/2012 passed by this Court in Cr. Revision No. 972/2011 (Mahesh Prasad and others Vs. State Economic Offence & Investigation Bureau, Gwalior) along with another Cr. Revision No. 937/2012 between the same parties. The facts of the present case are entirely different and, therefore, the case relied upon by the learned counsel is not helpful to the petitioner.

10. Considering the totality of the facts and circumstances of the case and the earlier passed by this Court in Mis. Cr. Case No. 3478/2006 (supra), no case is made out for transfer of the Special Sessions Trial No. 49/2007 from Gwalior to Morena. The petition being devoid of merit and substance deserves to be and is hereby dismissed. The Registry is hereby directed to sent back the record to the Trial Court forthwith. Certified copy as per rules.