

(2014) 03 DEL CK 0185

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7036/2013

Sayed Mohd. Ahmad Kazmi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 10, 326, 407, 7, 9
Explosive Substances Act, 1908 — Section 3
National Investigation Agency Act, 2008 — Section 11, 11, 12, 13, 13
Penal Code, 1860 (IPC) — Section 120B, 307, 323, 327, 489A
Unlawful Activities (Prevention) Act, 1967 — Section 16, 18

Citation : (2014) 4 AD 650 : (2014) 142 DRJ 673

Hon'ble Judges : Sanjiv Khanna, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Mehmood Pracha and Mr. Ajay Kalra, Advocate for the Appellant; Pavan Narang and Mr. Shivam Takiar Advocates for UOI., Mr. Siddharth Aggarwal and Mr. G. Khazanchi, Advocates for Respondent 2, Ms. Zubeda Begum, Standing Counsel, Mr. Satyam Thareja, Advocate for State, Insp. Haridayan and SI Vijay Kumar Special Cell, Delhi Police, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Sayed Mohd. Ahmad Kazmi is facing prosecution for offences punishable under Sections 307, 323, 327 and 120B of the Indian Penal Code (IPC, for short), Sections 16/18 of the Unlawful Activities (Prevention) Act, 1967 and Section 3 of Explosive Substances Act etc. arising out of FIR No. 4/2012 dated 13th February, 2012. The said FIR was registered and investigated by Special Cell, Lodhi Colony of Delhi Police. Charge sheet was filed by them on 30th July, 2012 and arguments on charge were heard by Mr. Atul Kumar Garg, Additional Session Judge (ASJ) 03 (Central), Tis Hazari Courts, Delhi on 22nd April, 2013 and 5th June, 2013, directing the parties to file written submissions by the next date, with a stipulation to exchange written submissions two days prior to the next date of hearing fixed for 9th July, 2013. Written submissions

were not filed by the public prosecutor on 9th July, 2013 but were filed on 16th July, 2013. Petitioner filed his written submissions on 17th July, 2013. Thereafter, dates for hearing were fixed, but order on point of charge could not be pronounced. As per the petitioner, the public prosecutor kept on delaying the proceedings on the pretext that a connected matter was pending before the Delhi High Court.

2. On 3rd August, 2013, administrative order bearing No. 3199-2009/DHC/GAZ/G-1/2013 was issued by the High Court of Delhi directing that all Session cases investigated by the Special Cell - Delhi Police (except cases under the NDPS Act) shall be assigned or transferred to the court of Additional Session Judge- 02, Patiala House Courts, New Delhi. Aggrieved, the petitioner made representation dated 17th August, 2013 and wrote letter dated 11th September, 2013 to various authorities but to no avail. The petitioner thereupon filed Writ Petition No. 6288/2013 titled Sayed Mohd. Ahmad Kazmi vs. Delhi High Court and Anr. assailing administrative order dated 3rd August, 2013 issued by Delhi High Court on various grounds. The writ petition was disposed of by order dated 25th October, 2013, which reads as under:-

1. With respect to the written submissions filed by respondent No. 2 predicated a stand on the notification dated September 12, 2013 and an order dated February 04, 2013 passed by the Joint Secretary, Ministry of Home Affairs, Government of India, an issue wholly unconnected with the original pleadings in the writ petition has emerged. That issue has now become the basic issue.

2. The issue arises in view of the constitution of a Special Court u/s 22(1) of the National Investigation Agency Act, 2008 and is Whether that Court alone would have jurisdiction to conduct the trial of the pending cases under the Act.

3. Accordingly, we grant permission to the petitioner to withdraw the writ petition with liberty to file a fresh petition. We further observe that on the next date of hearing i.e. October 30, 2013 the Special Court presided over by Mr. Daya Prakash, ASJ-2, New Delhi District shall not commence to hear arguments on framing of the charge.

4. Learned counsel for the petitioner undertakes that the fresh petition which would be required to be filed would be filed by him within the next week.

3. Paragraph 1 of the said order refers to the notification dated 12th September, 2013 and order dated 4th February, 2013 passed by the Joint Secretary, Ministry of Home Affairs, Government of India constituting a special court u/s 22(1) of the National Investigation Agency Act, 2008 (NIA Act, for short). For the purpose of clarity, we record that court presided over by Additional Session Judge-02, New Delhi District was designated as a Special Court under the NIA Act. Again for the purpose of clarity, we record that the court of the Additional Session Judge-02, New Delhi District, Patiala House Courts was also the constituted court to deal with all Session cases investigated by Special Cell, Delhi Police (except NDPS Act) under the administrative order dated 3rd August, 2013.

4. Thereupon and in terms of liberty granted, the petitioner has filed the present Writ Petition (Civil) No. 7036/2013 on various grounds and the prayer clause in the original petition was as under:-

Prayer:-

It is therefore, most respectfully prayed that this

Hon''ble Court may be pleased to:-

- a. Allow the present writ petition and;
- b. Issue the writ of certiorari or any other appropriate writ, order or direction thereby quashing/setting aside the Notification No. 3999-4009/DHC/GAZ/G-1/2013 dated 03.08.2013 and;
- c. Issue the appropriate writ, order or direction thereby re-transferring the case file bearing FIR No. 04/2012 registered with P.S. Special Cell, Lodhi Colony, New Delhi titled as State V/S Sayed Md. Ahmad Kazmi to the court of Shri Atul Kumar Garg, Ld. A.S.).-03, Tis Hazari Court Delhi for pronounce (sic pronouncement) of order on the point of charge and;
- d. Pass any further order/s or direction/s as be deemed just and proper to meet the ends of justice.

5. The petitioner moved CM No. 15927/2013 seeking leave to amend the writ petition in light of proceedings in the court on 13th November, 2013, which application was allowed vide order dated 13th December, 2013. The prayer clause now made in the amended writ petition which is being adjudicated and decided by the present order reads as under:-

PRAYER:-

It is therefore, most respectfully prayed that in view of the facts and circumstances of the case and in the interest of justice, this Hon''ble Court may be pleased to:-

- a. Allow the present writ petition and;
 - a(i). Issue the writ of mandamus or any other appropriate writ, order or direction thereby directing that the case file bearing FIR No. 04/2012 registered & investigated by P.S. Special Cell Lodhi Colony, New Delhi titled as State VS Syed Mohd. Ahmed Kazmi be transferred to the court of Shri Atul Kumar Garg, Ld. ASJ-03, Tis Hazari Court, Delhi, as the notification dated 12.09.2013 is not applicable to the present case and;
 - b. Pass any further order/s or direction/s as be deemed just and proper to meet the ends of justice.
6. Prayer clause (a) (i) is a substantive prayer and seeks appropriate writ, order or direction that the Session case be transferred to the court of Additional

Session Judge - 03, Tis Hazari Courts as notification dated 12th September, 2013 is not applicable to the prosecution/ charge sheet arising out of FIR No. 4/2012 registered in Special Cell Lodhi Colony, New Delhi. It is noticeable that the petitioner has given up challenge to the administrative order issued by Delhi High Court dated 3rd August, 2013 which was subject matter of the prayer clause "b" in the original writ petition. We feel and perceive that there are good reasons why the petitioner has given up the said challenge in spite of an earlier order dated 17th September, 2013 in Writ Petition (Civil) No. 5661/2013 titled Javed Ahmed Tantray and Anr. Vs. Delhi High Court and Anr. In Javed Ahmed Tantray's case, the Division Bench (S. Ravindra Bhat and Najmi Waziri, JJ) had allowed the writ petition and transferred the case to the Court of Additional Session Judge 03 (Central) Tis Hazari Courts, noticing the factual matrix that the concerned Judge had prior to the notification dated 3rd August, 2013, reserved the judgment on 1st August, 2013 and had fixed date of delivery of the judgment for 3rd August, 2013. All witnesses had been examined and the entire trial including the recording of the statements of the accused and submissions of the parties, were concluded on 1st August, 2013. The same Bench (S. Ravindra Bhat and Najmi Waziri, JJ) in Writ Petition (Civil) No. 5598/2013 titled Mohd. Shakeel vs. High Court of Delhi decided on 7th October, 2013 has rejected the objection to transfer of pending cases relating to Special Cell to Additional Session Judge-2, Patiala House Courts, New Delhi in terms of notification dated 3rd August, 2013 issued by the High Court recording the following reasons:

7. 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 Session 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.....so 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...

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

9. 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.

10. 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.

11. 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.

7. The aforesaid reasoning will equally apply and accordingly it cannot be held that the transfer of the charge sheet arising out of FIR No. 4/2012 registered at Police Station, Special Cell Lodhi Colony, New Delhi to Additional Session Judge 02, Patiala House Courts, New Delhi is bad or illegal for want of authority under the Constitution and the Code of Criminal Procedure, 1973 (Cr.P.C. for short). As already noticed above, the petitioner in the amended writ petition has given up his challenge to transfer of the case to the Special Court under notification dated 3rd August, 2013 issued by the High Court. In these circumstances, the contention raised by the petitioner that arguments had been heard by Additional Session Judge 03 (Central), Tiz Hazari Courts in the month of July, 2013 loses significance and is of no consequence. The said contention is also a non issue today as the arguments on charge necessarily will have to be heard afresh even if the matter had been examined and considered by Additional Session Judge 03 (Central), Tis Hazari Courts, keeping in view the long time gap.

8. In view of the aforesaid position, we need not examine the contention raised by the petitioner relying upon the provisions of NIA Act and notification dated 12th September, 2013 constituting Special Courts under the said enactment. As already noticed and recorded above, Additional Session Judge 02, Patiala House Courts, New Delhi is also designated as the Special Court under the NIA Act. In other words, Additional Session Judge 02, Patiala House Courts, New Delhi has been designated as the Special Court under the NIA Act as well as exclusive court to deal with charge sheets filed by P.S. Special Cell, Lodhi Colony in all cases to be dealt with by Session Division, except cases under NDPS Act. In other words, Additional Session Judge 02, Patiala House Courts, New Delhi is the court of competent jurisdiction as the charge sheet has been filed after

investigation by P.S. Special Cell, Lodhi Colony, New Delhi and the said court i.e. the Additional Session Judge 02, Patiala House Courts, New Delhi is also designated as the Special Court under the NIA Act.

9. Faced with the aforesaid situation, learned counsel for the petitioner submitted that an authoritative pronouncement is required whether the charge sheet in the present case is covered by the NIA Act. We find that aforesaid plea and contention has not been directly raised in the writ petition though our attention was drawn to grounds f, f(i), f(ii) and j of the amended writ petition.

10. Section 22 of the NIA Act reads:

22. (1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2) The provisions of this Chapter shall apply to the Special Courts constituted by the State Government under sub-section (1) and shall have effect subject to the following modifications, namely-

(i) references to "Central Government" in sections 11 and 15 shall be construed as references to State Government;

(ii) reference to "Agency" in sub-section (1) of section 13 shall be construed as a reference to the "investigation agency of the State Government;

(iii) reference to "Attorney-General for India" in sub-section (3) of section 13 shall be construed as reference to "Advocate-General of the State.

(3) The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.

11. As is apparent from the reading of the Section, it enables State Governments to constitute Special Courts for trial of offences under any or all of the enactments specified in the Schedule of the NIA Act. The said schedule refers to seven enactments and specific sections in Chapter VI of the Indian Penal Code i.e. Sections 121-130 both inclusive and Sections 489A to 489E both inclusive. Sub-section (1) to Section 22 of NIA Act refers to trial of offence(s) under any or all of the enactments specified in the schedule. Sub-section (2) makes the provisions of Chapter IV, i.e. Sections 11 to 22, of the NIA Act applicable to special courts constituted under Sub-section (1), subject to the modifications

stipulated in clauses (i) to (iii). The said clauses postulate that references to Central Government in Sections 11 and 15 shall mean references to State Government; reference to agency in Section 13(1) shall mean reference to the investigating agency of the State Government; and reference to Attorney General in Section 13(3) shall mean reference to Advocate General of the State. Sub-section (3) states that until special court is constituted by the State Government under sub-section (1), notwithstanding anything contained in the Code of Criminal Procedure 1973, the Court of Session of the Division in which such offence has been committed shall have all powers and will follow the procedure under Chapter IV of the NIA Act. Thus, where State Government has not constituted special courts under sub-section (1) to Section 22, the powers conferred under Chapter IV of the NIA Act shall be exercised by the Court of Session of the Division in which such offence is committed and the procedure in the said chapter of the NIA Act is to be followed. The provisions of Chapter IV on the power/authority of the court and procedure to be followed override the provisions contained in the Code of Criminal Procedure, 1973. The non-obstante stipulation in sub-section (3) is with reference to the power of the Court of Session and the procedure and even normal court of Session of the Division will have all powers in terms of sub-section (3) which are conferred on special courts under Chapter IV of the NIA Act. The procedure under chapter IV is to be followed. Sub-section (3) does not carve out or confer territorial jurisdiction on the Court of Session of a Division. Court of Session of the Division has not been defined in the NIA Act but stands defined and explained in Sections 7, 9 and 10 of the Code of Criminal Procedure. The expression "in which offence has been committed" refers to Court of Session which under the provisions of Code would have jurisdiction to try the offence. The object and purpose of sub-section (3) is clear from the last part of the said sub-section, which stipulates that Court of Session shall have all powers and follow the procedure provided under Chapter IV of the NIA Act. This is the intended purpose and object behind sub-section (3) and the non-obstante expression used in the said sub-section is for the said purpose. Thus, where special courts have not been constituted by the State Government u/s 22(1), the Court of Session which normally has jurisdiction to try the offence under the Code of Criminal Procedure will be entitled to proceed and adjudicate whether or not offence has been committed and also have all powers conferred and follow the procedure stipulated under Chapter IV of the NIA Act. Sub-section (4) stipulates that on and from the date when the special courts are constituted by the State Government, the trial pending before the Court of Session of a Division, shall be transferred to the special court if the trial relates to any offence under the provisions of the NIA Act and has been investigated by the State Government under the provisions of the NIA Act.

12. We fail to understand on what basis it is contended and submitted that the trial pending before Additional Session Judge 02, Patiala House Courts, New Delhi is vitiated u/s 22 of the NIA Act. As noticed above, the trial or proceedings pursuant to the charge sheet have been transferred to the court of Additional

Session Judge 02, Patiala House Courts, New Delhi pursuant to notification dated 3rd August, 2013 issued by the Delhi High Court in exercise of its administrative power. The said court would be the Court of Session of the Division for the purpose of Criminal Procedure Code in view of the dictum and as per the ratio of the decision dated 7th October, 2013 in WP(C) No. 5598/2013 titled Mohd. Shakeel vs. The High Court of Delhi. The same court i.e. Additional Session Judge 02, Patiala House Courts, New Delhi has been designated as a special court u/s 22(1) of the NIA Act. In terms of sub-sections (3) and (4) of Section 22, court of Additional Session Judge 02, Patiala House Courts, New Delhi, had all powers and had to follow the procedure under Chapter IV of NIA Act as a court of Session of the Division initially as a Special Court had not been constituted and as a Special Court after the constitution of the Special Court in terms of and under sub-section (4) read with sub-sections (1) and (2) of Section 22.

13. The entire National Capital Territory of Delhi prior to 1st March, 2013 was one division with a Session Judge. 11 Divisions were created vide notification dated 22nd February, 2013 w.e.f. 1st March, 2013. Police Station Special Cell, Lodhi Colony falls in New Delhi Division at Patiala House Courts. Additional Session Judge 02, Patiala House Courts, New Delhi Division is one of the Additional Session Judges falling within the said jurisdiction, whereas Additional Session Judge 03 (Central), Tis Hazari Courts is not one of the Additional Session Judge within the New Delhi Division. In the aforesaid factual background, challenge to the territorial jurisdiction of Additional Session Judge 02, Patiala House Courts, New Delhi Division, has to even otherwise fail. Thus, with effect from 12th September, 2013, Additional Session Judge 02, Patiala House Courts, New Delhi Division upon designation as a Special Court u/s 22 of the NIA Act, continued with proceedings as a Special Court and not as a Court of Session of the Division under sub-section (3). Earlier, Additional Session Judge 02, Patiala House Court, New Delhi Division was exercising powers under sub section 3 to Section 22 of the NIA Act. In actual effect, it made no difference because the Additional Session Judge 02, Patiala House Courts, New Delhi District was also Court of Session of Division exercising power and following the procedure of Chapter IV of the NIA Act and continued to exercise the same power and follow the same procedure under Chapter IV, subsequently as a Special Court.

14. Learned counsel for the petitioner, during the course of hearing, had drawn our attention to Section 6 of the NIA Act under Chapter III. Our attention was also drawn to letter/communication dated 4th February, 2013 of the Government of India No. 17011/49/2009-IS-VI (Pt. File) issued by Government of India, Ministry of Home Affairs (IS-I Division). The operative portion of which reads:

9. Now, therefore in exercise of the powers conferred to it U/S. 6(5), this Ministry- having considered. all the materials and facts brought before it with regard to the two cases, decides suo motto that these two cases i.e. (a) FIR No. 1/2012 and (b) FIR. No. 4/2012 registered by P.S. Special Cell, Delhi Police may

not be transferred to NIA and instead these may continue to be handled by Special Cell of Delhi Police.

15. We are not required to examine the provisions of Section 6 in the present writ petition but it is suffice to notice that the petitioner has not challenged or questioned the said order dated 4th February, 2013 in the writ petition.

16. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed with no order as to costs.