

(2011) 04 AHC CK 0378
In the Allahabad High Court
Case No : Misc. Bench No. 3681 of 2011

Shekhar Tewari	Vs	APPELLANT
Virendra Kumar Ii. Spl. Judge. Ayodhya Prakaran and Others		RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 201

Citation : (2011) 04 AHC CK 0378

Hon'ble Judges : Ritu Raj Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. While dictating judgment/order yesterday, on the request made by Sri Asok Pandey that he has moved an application before the Hon''ble the Chief Justice for nominating another Bench as one of the members of this Bench (Pradeep Kant, J.) is a member of Administrative Committee, the file was directed to be placed before the Hon''ble the Chief Justice for passing appropriate orders. Hon''ble the Chief Justice has directed the matter to be listed before the same Bench. We, therefore proceed to hear the matter.
2. Application for interim relief, filed today, be placed on record.
3. Heard the learned Counsel for the Petitioner Sri Asok Pandey, Sri Manish Kumar learned Counsel appearing for the High Court and Sri D.K. Upadhyay, the learned Chief Standing Counsel.
4. Arguments of the parties counsel are concluded.
5. The writ petition is dismissed. Reasons to be recorded later on.
6. In the first part of the day, we have dismissed this petition by passing the following order:

The writ petition is dismissed. Reasons to be recorded later on.

7. We herein set forth the reasons for passing the aforesaid order.

8. The Petitioner is an accused in case Crime No. 299/2008, State v. Shekhar Tewari and Ors. u/s 147/148/149/323/342/457/364/302/201/120-B IPC read with Section 7 Criminal Law Amendment Act, P.S. Dibiyaapur, Auraiya and Sessions Trial No. 446 of 2009 is going on in the court of Special Judge (Ayodhya Prakaran)/Additional District & Sessions Judge, Lucknow, who has been arrayed as Respondent No. 6 in the writ petition. The presiding judge of the said court Sri Virendra Kumar II has also been arrayed in individual capacity as Respondent No. 1.

9. The Petitioner is aggrieved by the stay of transfer of Respondent No. 1 for a period of three months under the directives issued by the High Court of Judicature at Allahabad, hereinafter referred to as the High Court.

10. Sri Asok Pande appearing for the Petitioner submits that as per the policy pronounced by the High Court and as is reflected from the Office Memorandum issued on 1.4.2011 regarding transfers of the presiding officers, the transfer of Respondent No. 1 could not have been stayed as it runs against the own policy of the High Court. Relying upon the recitals made in the aforesaid Office Memorandum that no representation of any officer in relation to transfer and posting would be entertained before the joining at the transferred place, he submits that the Respondent No. 1, in the instant case, has been transferred from Lucknow to Aligarh, where he was to join by 15th of April, 2011, but his transfer order being stayed for a period of three months, he did not join at the transferred place at all and, therefore, he could not have made any representation for staying his transfer.

11. On being clarified by the Presiding Officer himself on an application moved by the Petitioner before him that he has not moved any application for stay of his transfer, a fact which has been corroborated by Sri Manish Kumar, appearing for the High Court before us, learned Counsel for the Petitioner stressed that if that is so, then the order of stay is per se illegal and bad for the reason that the High Court could not have acted against its own policy, that too without any representation of the Presiding Officer.

12. Learned Counsel for the Petitioner also argued at length that once the transfer order was passed in respect of Respondent No. 1, he had no right to hold the post of Special Judge (Ayodhya Prakaran)/Additional District & Sessions Judge, Lucknow and, therefore, he has also prayed for issuance of a writ of quo warranto against him.

13. During the course of arguments, learned Counsel for the Petitioner raised many pleas regarding the conduct of the presiding officer and his alleged zeal to finish the trial at the earliest and for that matter, he also worked during those days when the lawyers were abstaining from work. Sri Manish Kumar appearing

for the High Court, objecting to the aforesaid plea, submitted that firstly, no such pleas were raised in the writ petition and secondly, no person can say that the court should not function when the lawyers are boycotting the courts. More so, in the instant case, there was a direction of the Supreme Court to conclude the trial expeditiously, which order was passed after taking into consideration the fact that a large number of petitions had been filed by the accused persons during trial just to delay the proceedings.

14. We do not intend to enter into the aforesaid pleas, for the reason that in the instant case, the entire emphasis in the pleadings of the petition is on the stay of transfer of the presiding judge, Respondent No. 1. In the supplementary affidavit filed alongwith the application for interim relief, it has been stated that in petitions filed u/s 482 Code of Criminal Procedure by four accused persons, who were not given opportunity to address the trial court and arguments were closed, the learned Single Judge on 15.4.2011 directed that they should be given atleast three days" time to place their arguments before the trial court.

15. The incident is of the year 2008 and the sessions trial is pending since 2009. As per the information given by the parties" counsel, the trial was concluded and judgment was reserved on 11.4.2011. In the meantime, four accused persons filed petitions u/s 482 Code of Criminal Procedure and the learned Single Judge of this Court on 15.4.2011 directed for giving them at least three days" time to put forward their arguments. This order also says that the Petitioners shall avail this opportunity without seeking any adjournment and in default, they shall not be given any further opportunity for argument. The trial court was directed to complete the proceeding of the case. That being so, the Petitioner cannot raise any grievance regarding the stay of transfer of Respondent No. 1.

16. This apart, we find force in the objection raised by the counsel for the High Court that the Petitioner being one of the accused persons in the trial can have no say in the matter of transfer of the presiding judge and he has no locus standi to challenge the order of stay of his transfer.

17. The Petitioner cannot be taken to be an aggrieved person to approach the High Court under Article 226 of the Constitution of India. He or any person under litigation before any court cannot be allowed to raise a grievance against the transfer of presiding judge or his stay, as such transfers, postings and stay lie within the domain of the High Court and are not dependent upon the will of the parties to litigation.

18. We, thus, do not find any force in the writ petition, which stands dismissed.