

(2019) 06 SIK CK 0003

In the Sikkim High Court

Case No : Suo Motu Transfer Petition (Crl.) No. 03 Of 2019

State Of Sikkim

APPELLANT

Vs

Arun Kumar Gupta

RESPONDENT

Date of Decision : 07-06-2019

Acts Referred:

Citation : (2019) 06 SIK CK 0003

Hon'ble Judges : Vijai Kumar Bist, CJ

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Vijai Kumar Bist, CJ

1. Learned Special Judge (POCSO Act, 2012), East Sikkim at Gangtok, has sent a letter bearing reference no. 95/D&SJ(E) dated 15.05.2019, to the

Registrar General, High Court of Sikkim along with a copy of Order passed by him on 13.05.2019 in S.T. (POCSO) Case No.01 of 2018 : State of

Sikkim vs. Arun Kumar Gupta, expressing his difficulties to proceed with the matter.

2. Order passed by the learned Special Judge on 13.05.2019, is as follows;

13.05.2019

At the very outset, I am directed to state that the learned Special Judge has not mentioned the date of the order passed by him on 13.05.2019 in S.T. (POCSO) Case No.01 of 2018 : State of Sikkim vs. Arun Kumar Gupta, expressing his difficulties to proceed with the matter.

At the very outset, Ld. Counsel Ms. Gita Bista submits that she is presently attached to the chambers of Ld. Senior Advocate Shri N.B. Khatiwada.

Since the Ld. Senior Advocate happens to be my father it would not be appropriate on my part to proceed with the matter.

At the very outset, I am directed to state that the learned Special Judge has not mentioned the date of the order passed by him on 13.05.2019 in S.T. (POCSO) Case No.01 of 2018 : State of Sikkim vs. Arun Kumar Gupta, expressing his difficulties to proceed with the matter.

!..â??

3. This Court in Transfer Petition (C) No. 02 of 2019 in the matter of Mahesh Chettri & Another vs. State of Sikkim & Others, has given the grounds

on which cases can be transferred from one Court to another. Paragraphs 4 and 5 of the above Order are extracted herein below:-

â??(4) In the present case, this fact was brought before the learned District Judge that earlier his father, being the Additional Advocate General of

the State, had appeared for the State in respect of the same subject matter. In my view, this cannot be and should not be ground for recusal from the

case. The District Judge, at no point of time, was involved in any manner with the case. He himself was not appearing for any of the parties. It was

his father who was appearing for the respondent, that too, for the State as State Counsel/Additional Advocate General. In fact, in many cases the

Counsel for the State appear on behalf of the State. They do not even remember in which case they appeared for the State. The father of the District

Judge appeared in his private capacity and the District Judge had nothing to do with the said case. In some cases it is found that father appears for

one party and son appears for opposite party. They appear for the respective parties in their individual capacity. Nothing wrong in it.

(5) In my view, it is the duty of a Judge to hear every matter placed before him without fear or favour. A Judge can recuse when he or his family

membersâ?? interest is involved in the case. He can also recuse when his close relative is a party in the lis. He can recuse from a case where one of

the parties is known to him and is closely associated with him. He can also recuse when he had earlier as an Advocate appeared for one of the

parties. A Judge can also recuse where he had earlier given legal opinion in the matter or has a financial interest in the litigation.â??

4. I have perused and considered the Order passed by the learned Special Judge. The reason given by the Special Judge is that Ms Gita Bista,

Advocate, is presently attached to the chamber of Shri N.B. Khatiwada, Senior Advocate. It is also stated by him that Shri N.B. Khatiwada is his

father. Hence, it would not be appropriate on his part to proceed with the matter. In my view, the reason given by the learned Special Judge does not

appear to be correct. The fact that Ms Gita Bista is a chamber junior to his father is not a sufficient ground for transfer of the case. Further, no

allegation has been made by anyone against the Special Judge. It is also not a case where any of the party has prayed for transfer of the case.

5. Consequently, request of the learned Special Judge for transfer of S.T. (POCSO) Case No. 01 of 2018 : State of Sikkim vs. Arun Kumar Gupta, stands rejected.

6. The Special Judge (POCSO Act, 2012), East Sikkim at Gangtok, be informed accordingly.

7. This Suo Motu Transfer Petition stands disposed of, accordingly.