
(2006) 11 AHC CK 0174
In the Allahabad High Court

Waliullah

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 22
Criminal Procedure Code, 1973 (CrPC) — Section 302, 303, 407
Explosive Substances Act, 1908 — Section 3, 4, 5
Penal Code, 1860 (IPC) — Section 120B, 302, 307, 324, 326

Citation : (2006) 11 AHC CK 0174

Hon'ble Judges : Shiv Shanker, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Shanker, J.—This is a transfer application moved u/s 407 of the Code of Criminal Procedure on behalf of accused-applicant Waliullah son of Habibullah praying to recall three connected Sessions Trial No. 368 of 2006, under Sections 3/4/5/ Explosive Substance Act; 15/16 Unlawful Activities Prevention Act and 302/307/324/326 IPC, Police station Lanka, district Varanasi, Sessions Trial No. 400 of 2006, u/s 302/307/324/ 326/424/120B IPC. and 3/4/5/ Explosive Substance Act, Police station G.R.P. Cantt, district Varanasi and Sessions Trial No. 388 of 2006 under Sections 3/4/5/ Explosive Substance Act. Police station Dashaswamedh, district Varanasi and transfer to some other court of sessions outside the court of Sessions, Varanasi.

2. Heard Sri Vinay Saran, learned Counsel for the applicant and learned A.G.A. as well as perused the whole records, including the supplementary affidavit filed on 22.11. 2006 which was taken on record.

3. It is contended by the learned Counsel for the applicant that no Advocate of district Varanasi is available to conduct the case of the applicant according to his choice. It was case where the public sentiment is involved. Therefore, he is unable to get lawyer of his choice and most of the senior lawyers of the city have

refused to appear on behalf of the applicant in the trial of the aforementioned three cases. It is further contended that the atmosphere at the Court of Sessions at Varanasi is very hostile towards the applicant so much so that on 21.4.2006, while the applicant was produced before the court after his so called arrest, heavy stone pelting was done by the public and activists of various organization posing serious threats to the life of the applicant. Photocopy of news-paper cutting to the effect is available on record as Annexure-XI to the application. It is further contended that when the applicant was again produced in court on 23.4.2006, a mob of lawyers, numbering in hundreds, gathered and assaulted the applicant in court premises itself while, the administration and police party remain a silent spectator. Photocopy of news-paper cutting to this effect is available on record as Annexure-XII to the application. It is further contended that the atmosphere of Court of Sessions at Varanasi is so charged that on 3.10.2006, a resolution was brought to the Bar Association on a signature campaign by the local lawyers that no lawyer would appear on behalf of the applicant in the aforesaid connected sessions trials. The true copy of the said resolution is also available on record as Annexure-XIII to the application. It is further contended that the applicant and his father also brought these facts to the notice of the Sessions Judge, Varanasi and, thereafter, the dates in the trials are being given inside jail in specially constituted court. It is also contended that till dates none of the family members were allowed to meet the applicant at Varanasi and it was only when the applicant was produced at Allahabad in a previous Sessions Trial No. 872 of 2001, the brothers met the applicant in Allahabad Court. Therefore, the applicant is being denied of his legal right of being defended by the pleader of his choice as contemplated u/s 303 of the Code of Criminal Procedure, which is against Articles 21 and 22(1) of the Constitution of India. Without his choice, an Amicus Curiae has been appointed to defend the case of the applicant, which is also against the provision of Section 303 of the Code of Criminal Procedure. It is further contended that no lawyers from out side of Varanasi are ready to go and conduct the trials at Varanasi on behalf of the applicant. It is further contended that the applicant is inside jail and he does not have any near relative or friend at Varanasi, who may do Pairvi for him at Varanasi. The learned Counsel for the applicant has attracted the attention of the Court on the following decisions of the Apex Court:

- (1) Ravir Godbole v. State of M.P. (2006) 3 S C C 400.
- (2) Jayendra Saraswathy Swamigal, Tamil Nadu Vs. State of Tamil Nadu and Others,
- (3) Zahiura Ilabibulla H. Sheikh and Anr. v. State of Gujarat and Ors. 2004 S C C 999
- (4) Ranchod Mathur Wasawa v. State of Gujarat 1974 S C C 59 .
- (5) Sesamma Phillip & ETC. v. P. Phillip & Etc. 1973 S C C 349 .

4. On the other hand, it is submitted by the learned A.G.A. that there will be

difficulty of the prosecution witnesses, who are fifty five in number in each sessions trial, to go in another district for giving their evidence. It is further contended that hearing of the above sessions trials is being made in Varanasi Jail as per the orders of the appropriate authority. In such circumstances, there will be no danger to the applicant in jail for doing the Pairvi of the case. It is further contended that the Advocates of outside district can also be engaged to do the Pairvi of his case. The names of the Advocates have not been disclosed in the transfer application to whom the Pairokar of the applicant had met to do the Pairvi of the above sessions trials. In these circumstances, the sessions trials should not be transferred merely on the choice of the applicant and the transfer application is liable to be rejected.

5. The incident had alleged happened in the city of Varanasi at a very religious place i.e. premises of Sankat Mochan Mandir by making bomb blast at three places simultaneously on the same date and time. Photocopy of news-paper cutting (Annexure-XI) reveals that heavy stone pelting was done by the public upon the applicant when he was produced firstly in the court of Varanasi. Similarly, second time, stone pelting was made as per Annexure-XII. Therefore, it appears that after considering the safety of the applicant, who is facing the above sessions trials, the trials are being conducted inside the District Jail, Varanasi as per the orders of the appropriate authority.

6. Section 303 of the Code of Criminal Procedure, 1973 is produced as under:

303. Any person accused of an offence before a Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

7. The resolutions of Bar, which are Annexures 12 and SA-1 available record, to the application and supplementary affidavit, reveal that resolution was made in the Bar Association for not doing the Pairvi on behalf of the applicant but doing the Pairvi of the prosecution free of costs and fee will be paid from the funds of the Bar Association of Varanasi. Although such resolution was deferred in the absence of adequate quorum. However, no Advocate has been prepared for defending the case of the applicant in district Varanasi. Similarly, no Advocate of the outside of district is ready to go to Varanasi for doing the Pairvi of the case of the applicant. These facts have been mentioned in the affidavit and supplementary affidavit filed on behalf of the applicant. No counter affidavit or supplementary counter affidavit has been filed on behalf of the State controverting the facts. In such circumstances, Amicus Curiae have been appointed by the Court for doing the Pairvi of the case on behalf of the applicant. This shows that the applicant cannot engage an Advocate of his choice for doing the Pairvi of the case. It is also the fundamental right of the citizen as provided in Articles 21 and 22(1) of the Constitution of India which are quoted as below:

21. Protection of life and personal liberty: - No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases:-(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

8. It is important to note here that justice not only be done but appears to be done. The appointing of amicus curiae for defending the case of the applicant shows that he was unable to engage any Advocate in the district of Varanasi as well as out side of district Varanasi according to his choice. It appears that there is violation of provision of Section 302 of the Code of Criminal Procedure, 1973 as well as the fundamental rights conferred by Articles 21 and 22(1) of the Constitution of India, as the applicant is ready to engage an Advocate of his choice for doing the Pairvi of his case. In such circumstances, it will be appropriate in the ends of justice that the above three connected sessions trials pending in the court of Special Judge (E.C.Act), Varanasi be transferred to any other district.

9. It is worthwhile to mention here that about fifty five prosecution witnesses in each sessions trial, aforementioned, are to be produced for their examinations. The applicant is resident of district Allahabad and it will not be appropriate to transfer the cases from Varanasi Sessions Division to nearby Sessions Division of districts. In the circumstances, in my view, it will be justified in the interest of justice that the aforementioned sessions trials be transferred to the Sessions Division, Ghaziabad as there will be no problem for engaging the counsel by the applicant of his choice of Ghaziabad or nearby districts or New Delhi for conducting his trials fairly.

10. After considering the facts and circumstances of the case and submissions made on behalf of both the parties, this transfer application is liable to be allowed.

11. Consequently, the transfer application is hereby allowed and the aforementioned three connected sessions trials, pending in the court of Special Judge (B.C. Act), Varanasi are hereby recalled and transferred to the court of Sessions Judge, Ghaziabad for trial. The Sessions Judge, Ghaziabad is specially directed to conduct the trial of the aforementioned sessions trials himself according to law.