

K. ANBAZHAGAN

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v.

SUPERINTENDENT OF POLICE, CHENNAI AND ORS.

FEBRUARY 17, 2004

[S.N. VARIAVA AND H.K. SEMA, JJ.]

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*Code of Criminal Procedure, 1973—Section 406—Transfer of case from State of Tamil Nadu to Karnataka—Petitions for modification of transfer order seeking transfer to Pondicherry—Personal security and free and fair trial apprehended in State of Karnataka—State of Karnataka undertaking to ensure security of the petitioners and free and fair trial—Held: In the facts and circumstances of the case, no case is made out for modification—Pondicherry falling within same jurisdiction of High Court of Madras, transfer thereto would amount to transfer of case to the jurisdiction of same High Court, which is not contemplated u/s 406.*

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In a transfer petition u/s 406 Cr.P.C., Supreme Court had transferred a case from Tamil Nadu to Karnataka. Miscellaneous petitions were filed seeking modification of the judgment transferring the case. Petitioners sought transfer of the case to Pondicherry instead of Karnataka, apprehending their security and free and fair trial in view of surcharged atmosphere between the States of Tamil Nadu and Karnataka due to Cauvery Water dispute and in view of terror of forest brigand Veerappan; and that if the cases were transferred to Pondicherry, the same having Tamil speaking people, translation of Tamil documents and depositions would not be required.

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State of Karnataka in its Counter affidavit undertook that the State of Karnataka would ensure free and fair trial and it would provide such security as would be necessary.

Dismissing the petitions, the Court

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HELD: 1. In the judgment deciding the transfer petition, this Court was of the view that it is expedient for the ends of justice, the cases be transferred from Tamil Nadu to Karnataka for trial in accordance with law. Similarly, the lurking apprehension raised by the applicant is well

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A safeguarded by the undertaking of the Karnataka Government with regard to the personal security of the applicant and witnesses and others. The apprehensions with regard to the Cauvery Water dispute, forest brigand Veerappan, have got nothing to do with the judicial function of the Court. In the facts and circumstances, no case is made out for modification of the order under reference. [501-C-E]

B 2. The Court has exercised its powers under Section 406 Cr.P.C. Section 406 enjoins that it is expedient for the ends of justice, this Court may direct any particular case or appeal be transferred from one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. Admittedly, Union Territory of Pondicherry does not have a separate High Court, it is within the jurisdiction of Madras High Court. If the case is transferred to Pondicherry, it would amount to transfer of case from Madras High Court to the same jurisdiction of the High Court. This situation is not contemplated under Section 406 Cr. P.C. [499-C-D]

D CRIMINAL APPELLATE JURISDICTION : Criminal Misc. Petition Nos. 11439-40 of 2003.

IN

E Transfer Petition Cri Nos. 77-78 of 2003.

T.R. Andhyarujina, R. Shanmugasundaram, R. Mohan and V.G. Pragasam for the Petitioner.

F K.K. Venugopal, C.S. Vaidyanathan, K.V. Vishwanathan, K.V. Venkataraman, N. Jothi and B. Raghunath for Applicant.

G A.T.M. Rangaramanujam, S. Nanda Kumar, M. Yogesh Khanna, R. Suresh, S. Venketesh Perumal, Rakesh K. Sharma K.V. Vijayakumar, Subramonium Prasad, R. Gopala Krishnan, P.N. Ramalingam, R.N. Keshwani, A.N. Jayram, Adv. General for State, Sanjay R. Hedge and Anil K. Misra for the Respondents.

The Judgment of the Court was delivered by

H SEMA, J. By these applications the applicant sought to modify the judgment dated 18th November, 2003 passed by this Court in Transfer Petition (Criminal) Nos. 77-78 of 2003. By the aforesaid judgment, this Court after

hearing counsel for both the sides at length allowed the transfer petitions in terms of the following directions: A

“(a)The State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka shall constitute a Special court under the Prevention of Corruption Act, 1988 to whom CC No.7 of 1997 and CC No.2 of 2001 pending on the file of the XI Addl. Sessions Judge (Special Court No.1) Chennai in the State of Tamil Nadu shall stand transferred. The Special Court to have its sitting in Bangalore. B

(b) As the matter is pending since 1997 the State of Karnataka shall appoint Special Judge within a month from the date of receipt of this Order and the trial before the Special Judge shall commence as soon as possible and will then proceed from day to day till completion. C

(c) The State of Karnataka in consultation with the Chief Justice of High Court of Karnataka shall appoint a senior lawyer having experience in criminal trials as public prosecutor to conduct these cases. The public prosecutor so appointed shall be entitled to assistance of another lawyer of his choice. The fees and all other expenses of the Public Prosecutor and the Assistant shall be paid by the State of Karnataka who will thereafter be entitled to get the same reimbursed from the State of Tamil Nadu. The Public Prosecutor to be appointed within six weeks from today. D

(d) The investigating agency is directed to render all assistance to the public prosecutor and his assistant. E

(e) The Special Judge so appointed to proceed with the cases from such stage as he deems fit and proper and in accordance with law. F

(f) The Public Prosecutor will be at liberty to apply that the witnesses who have been recalled and cross-examined by the accused and who have resiled from their previous statement, may be again recalled. The public prosecutor would be at liberty to apply to the court to have these witnesses declared hostile and to seek permission to cross-examine them. Any such application if made to the Special court shall be allowed. The public prosecutor will also be at liberty to apply that action in perjury to be taken against some or all such witnesses. Any such application/s will be undoubtedly considered on its merit/s. G

A (g) The State of Tamil Nadu shall ensure that all documents and records are forthwith transferred to the Special Court on its constitution. The State of Tamil Nadu shall also ensure that the witnesses are produced before the Special Court whenever they are required to attend that Court.

B (h) *In case any witness asks for protection the State of Karnataka shall provide protection to that witness.*

(Emphasis supplied)

C (i) The Special Judge shall after completion of evidence put to all the accused all relevant evidence and documents appearing against them whilst recording their statement under Section 313. All the accused shall personally appear in Court, on the day they are called upon to do so, for answering questions under Section 313, Criminal Procedure Code.”

D In our view, the aforesaid directions have adequately taken care of the security of the witnesses and others.

Mr. Venugopal, learned Senior counsel contended that in view of surcharged atmosphere and large scale agitation by a section of the people of Karnataka targeting the applicant as well as attacks on Tamil speaking people caused by highly sensitive Cauvery Water dispute issue, the trial if allowed to be taken in the State of Karnataka, the personal security of the applicant would be seriously jeopardized and thus free and fair trial would not be possible. Another ground seeking for modification of the order is that the notorious forest brigand Veerappan, who is believed to be a Tamilian, kidnapped the Karnataka matinee idol, Shri Raj Kumar and demanded a huge ransom for his release, resulting in constraint relationship between the two States. It is argued by Mr. K.K. Venugopal that in view of the surcharged and tense situation in between the States of Tamil Nadu and Karnataka, the personal security of the applicant is prejudiced and free and fair trial in such an atmosphere would not be possible depriving the right of the applicant to have free and fair trial as enshrined in Article 21 of the Constitution. It is further argued that the Union Territory of Pondicherry, being closest to Chennai, it is a more convenient place for the parties due to its proximity to Chennai and also the people in Pondicherry are Tamil speaking people and the Judges there are expected to know Tamil and in that view no translation of the Tamil documents and depositions would be necessary. According to

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Mr. Venugopal, if the cases are transferred to the Union Territory of Pondicherry instead of Karnataka, justice would be better subserved. Mr. Venugopal further submitted that the closest amongst the capitals of the three States and the Union Territory of Pondicherry to Chennai is Pondicherry which is about 100 miles (162 Kms) whereas Bangalore is 200 miles (334 kms), Hyderabad 400 miles (704 kms), Cochin 430 miles (689 kms) and Thiruvananthapuram 500 miles (790 kms).

Before we advert further, we may at this stage, dispose of this part of the argument of Mr. Venugopal. This Court has exercised its powers under Section 406 of the Code of Criminal Procedure. Section 406 enjoins that it is expedient for the ends of justice, this Court may direct any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. Admittedly, Union Territory of Pondicherry does not have a separate High Court, it is within the jurisdiction of Madras High Court. If this submission is accepted it would amount to transfer of case from Madras High Court to the same jurisdiction of the High Court. This situation is not contemplated under Section 406 of the Code. This contention, in our view, is not well founded.

Pursuant to the notice, the State of Karnataka has filed counter affidavit. The State of Karnataka in their counter has denied all the allegations made in the applications. Learned Advocate General for the State of Karnataka has appeared before us and submitted that pursuant to the directions of this Court a Special Judge has been appointed in consultation with the Chief Justice of the High Court and all the arrangements have been made for conducting free and fair trial smoothly. In paragraph 2 of the counter affidavit it is stated:-

“At the outset, it is submitted that for the purpose of securing the relief prayed for in the application, the applicant has chosen to present a picture far from the existing reality in the State of Karnataka. *It is no doubt true that the dispute relating to the River Cauvery which is now pending adjudication before the Cauvery Water Disputes Tribunal has occasionally given rise to strong feelings among the peoples of both States. This, would not mean that the legal system in Karnataka will be unable to ensure a fair trial for the applicant in accordance with the norms and conditions set out by this Hon'ble Court in its*

A *earlier order dated 18.11.2003. For its part, Karnataka will ensure that the trial is fair and all necessary security is provided to the applicant at all stages of the trial. This submission is made as the allegations in the application amount to an unfair criticism of the legal system operating in Karnataka for which there is absolutely no warrant or justification.*

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(Emphasis supplied)

In paragraph 5 it is stated :

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“Undoubtedly, there have been large scale agitations in the past in regard to the dispute relating to the sharing of Cauvery waters and feelings ran high in both States. The issue of release of water in accordance with the orders of the Tribunal has no relevance to the facts herein pleaded and have no bearing on the conduct of a fair trial. The suicides referred to are not of Tamil Nadu farmers but of farmers from Karnataka who carry on agricultural operations in the Cauvery basin.

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In paragraph 8 it is stated :-

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“Karnataka takes strong exception for describing the atmosphere in the State as “foul and totally vitiated”. These false and self-serving statements are apparently made to bolster up the plea for the relief. There is no reason to apprehend that Karnataka will not take adequate steps for ensuring a fair trial as directed by this Hon’ble Court. Only a few months ago, the applicant visited on her own a Temple in Mysore City and there is absolutely no incident relating to it and she was able to complete her visit to the Temple peacefully and return to Tamil Nadu safely. She informed the press persons that it was a personal visit and did not wish to be drawn into political matters”.

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In paragraph 9 it is stated:

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“This Hon’ble Court when it made its order was aware of the fact that many of the documents would be in Tamil. Karnataka has arranged for Official Translators so that the translation of the Tamil documents and witnesses’ depositions can be effectively done”.

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In paragraph 11 it is stated :-

“As submitted earlier, Karnataka being a State of the Union, is duty

bound to uphold the federal system and constructively participate and carry out the directions of this Hon'ble Court. *Karnataka will ensure that the trial is fair and such security as may be necessary will be provided. Karnataka has no interest in the outcome of the trial. It looks upon it only as a constitutional duty to be discharged to effectuate the order of this Hon'ble Court*".

(Emphasis supplied)

We are not persuaded to re-appreciate the circumstances leading to the filing of the Transfer Petitions and order of this Court transferring the same to the State of Karnataka. After hearing counsel for both the sides and threadbare discussion this Court was of the view that it is expedient for the ends of justice the cases be transferred from Tamil Nadu to Karnataka for trial in accordance with law. Similarly, the lurking apprehension raised by the applicant is well safeguarded by the undertaking of the Karnataka Government with regard to the personal security of the applicant and witnesses and others as referred to above. To say the least, the apprehensions with regard to the Cauvery Water dispute, forest brigand Veerappan, have got nothing to do with the judicial function of the Court. At the same time, the security and safety of the applicant and witnesses are well safeguarded as highlighted in the counter affidavit of the State of Karnataka.

In the facts and circumstances aforesaid, no case is made out for modification of our order under reference. Resultantly, the petitions are dismissed being devoid of merits.

Before parting with the record, we must unequivocally say that in a democratic country like ours, governed by the Rule of Law, the efficient and independent judiciary manned the subordinate courts, where justice is administered impartially, fearless of public glamour, regardless of public responses and indifferent to private, political or partisan influences. We have no least doubt in our mind that the learned judge who has been assigned the job will do well in discharging his divine duty in accordance with law, keeping in mind the above principle in view.

K.K.T.

Petition dismissed.