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SATISH JAGGI

v.

STATE OF CHHATTISHGARH AND ORS.

FEBRUARY 22, 2007

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[DR. ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.]

Code of Criminal Procedure, 1973:

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s.147—Transfer of case—Permissibility—Governing factors—Transfer of Criminal trial—Prayed on the ground that the present Sessions Judge, Raipur before whom trial was pending was brother of sitting MLA and the father of accused was known to him—Plea of appellant that he was under genuine apprehension that he will not get justice if the trial is conducted and concluded by the present Sessions Judge—High Court rejected the prayer—

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On appeal, held, Sessions Judge himself not indicated his disinclination to hear the matter—He would have acted in the true sense of a judicial officer—However, to ensure that justice is not only done, but also seem to be done, it will be appropriate if the High Court transfers the case to some other Sessions Judge in Raipur itself—Administration of Justice.

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Appellant had filed a transfer petition under s.407 Cr.P.C. before the High Court for seeking transfer of a criminal trial pending in the Court of Sessions Judge, Raipur on the ground that the father of accused was the previous Chief Minister of the State and close to the sitting MLA who was brother of the Sessions Judge before whom the trial was pending. According to appellant, he was under a *bona fide* and genuine apprehension that he will not get justice if the trial is conducted and concluded by the present Sessions Judge.

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The High Court rejected the prayer of transfer holding that the grounds set forth by the appellant seeking transfer were not sufficient to direct transfer.

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In appeal to this Court, appellant contended that ultimately administration of justice rests on many principles and one of the fundamental principles is that justice should not only be done but it should be seen to be done.

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Respondent contended that if the allegation is accepted it would be doubting the impartiality of the present Sessions Judge; there is no material to show that the Judge has any bias or any partisan attitude and the fortuitous circumstances that his brother is an MLA cannot be a factor to doubt the judicial discipline of the Sessions Judge.

Disposing of the appeal, the Court

HELD: 1. The Sessions Judge himself has not indicated his disinclination to hear the matter. That is probably because he believes that the mere fact that his brother is known to some political heavyweight cannot stand in his way of discharging judicial function impartially without fear and favour. These are the hallmarks of judicial system. A judicial officer in whatever capacity he may be functioning has to act with the belief that he is not to be guided by any factor other than to ensure that he shall render a free and fair decision which according to his conscience is the right one on the basis of materials placed before him. There can be no exceptions to this imperative, but at the same time there should not be any scope given to any person to go away with the feeling that the Judge was biased, however unfounded the impression may be. [Para 10] [1077-E-G]

Gurcharan Dass Chadha v. State of Rajasthan, AIR (1966) SC 1418; *Mrs. Maneka Sanjay Gandhi and Anr. v. Miss Rani Jethmalani*, AIR (1979) SC 468; *Abdul Nazar Madani v. State of Tamil Nadu*, AIR (2000) SC 2293; *G.X. Francis v. Banke Bihari Singh*, AIR (1958) SC 309 and *Pal Singh and Anr. v. Central Bureau of Investigation and Ors.*, [2005] 12 SCC 329, referred to.

"Judges" by David Pannick, referred to.

2. The present Sessions Judge would have acted in the true sense of a judicial officer. But nevertheless to ensure that justice is not only done, but also seen to be done and in the peculiar facts of the case, it will be appropriate if the High Court transfers the case to some other Sessions Court in Raipur itself. The transfer shall not be construed as casting any aspersion on the Sessions Judge. [Para 11] [1076-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 241 of 2007.

From the Judgment/final Order dated 21.11.2006 of the High Court of Judicature, Chhattisgarh at Bilaspur in T.P. (Crl.) No.5/2006.

A Arun Jaitely, V.K. Munshi, Sidharth Luthra, Shri Singh and Ashok Mathur for the Appellant.

K.K. Venugopal, Vivek Tankha, Rahul Sharma, P.N. Puri, Atul Jha, Dharmendra Kumar Sinha, P. Parmeshwaran, Rajiv K. Garg, Rajeev Sharma, Ashish Garg and A.D.N. Rao for the Respondents.

B The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

C 2. Challenge in this appeal is to the order passed by a learned Single Judge of the Chhattisgarh High Court dismissing the transfer petition filed under Section 407 of the Code of Criminal Procedure, 1973 (for short 'the Code') for transferring of Sessions Trial no.329/2005 (*State through CBI v. Amit Jogi and 30 Ors*), pending in the Court of Sessions Judge, Raipur, Chhattisgarh to some other Court. The transfer was sought for primarily on the ground that the Sessions Judge before whom the trial was pending is the elder brother of a sitting MLA who is very close to the father of respondent no.3, one of the main accused persons. It was alleged that the father of respondent no. 3 was the previous Chief Minister of the state and that he and the brother of the Learned Sessions Judge belong to the same political party. It was further stated that the said MLA was very close to the father of respondent no.3 who was earlier the Chief Minister of the State. Therefore, according to the appellant, he was under a *bona fide* and genuine apprehension that he will not get justice if the trial is conducted and concluded by the present Sessions Judge. It was also stated that the major part of the trial was conducted by the third Additional Sessions Judge, Raipur. By order dated 21.6.2006 the case was transferred to the Court of the Session Judge, Raipur (Shri R. S. Sharma) who examined four prosecution witnesses and 21 defence witnesses. At that stage, Shri R. S. Sharma was transferred as Sessions Judge, Janigir- Champa and Shri Sanman Singh was posted in his place as the Sessions Judge. Therefore, prayer was made to transfer to the Court of Sessions Judge, Janigir-Champa, where the previous Sessions Judge was posted. so that he could conclude the trial by camping at Raipur for that purpose. The High Court held that assurance of fair trial is imperative for the dispensing of justice and the primary consideration for the Court is to consider whether a motion of transfer is made out and the High Court is not required to lay stress on hypersensitivity or relative convenience of a party. The High Court felt that the grounds set forth by the appellant seeking transfer cannot be considered to be sufficient to direct transfer. Merely because the brother

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of the trial! Judge was a sitting MLA, that cannot be a ground to *prima facie* come to a conclusion that there would be pressure through either by the brother or father of the accused who was supposed to be close to his brother. It was further noted that the trial is at a final stage and about 150 prosecution witnesses and all the defence witnesses have been examined and what remains to be done is to hear the arguments and pass the judgment. Therefore, the prayer was rejected.

3. Learned counsel for the appellant submitted that ultimately administration of justice rests on many principles and one of the fundamental principles is that justice should not only be done but it should be seen to be done. The present case is not one where a mere allegation is made. There is no dispute that the brother of the present Sessions Judge is a sitting MLA belonging to a particular party of which respondent no.3's father was earlier the leader and the Chief Minister.

4. Mr. K.K. Venugopal, learned senior advocate, appearing for some of the respondents submitted that if the allegation is accepted it would be doubting the impartiality of the present Sessions Judge. There is no material to show that the Judge has any bias or any partisan attitude. The fortuitous circumstances that his brother is an MLA cannot be a factor to doubt the judicial discipline of the Sessions Judge.

5. The law with regard to transfer of cases is well settled. This Court in the matter of *Gurcharan Dass Chadha v. State of Rajasthan*, AIR (1966) SC 1418 held that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. This Court said that a petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. This Court further held that it is one of the principles of the administration of justice that justice should not be done but it should be seen to be done. The court has further to see whether the apprehension is reasonable or not. This Court also said that to judge the reasonableness of the apprehension, the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the court to be a reasonable apprehension.

6. It was further held by this Court in *Mrs. Maneka Sanjay Gandhi and Anr. v. Miss Rani Jethmalani*, AIR (1979) SC 468 that assurance of a fair trial

- A is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or availability of legal services or any like grievance. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer.
- B This is the cardinal principle although the circumstances may be myriad and vary from case to case. This Court, in the facts and circumstances of the case, said that the grounds for the transfer have to be tested on this touchstone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. It further said that even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.
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7. In *Abaul Nazar Madani v. State of Tamil Nadu*, AIR (2000) SC 2293 this Court stated that the purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 of the Code. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any Court or even at any place, the appropriate Court may transfer the case to another Court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, if any, the witnesses and the larger interest of the society.
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8. In *G.X. Francis v. Banke Bihari Singh*, AIR (1958) SC 309 this Court felt that where public confidence in the fairness of the trial is likely to be seriously undermined under the circumstances of the case, transfer petition could be allowed. On finding that "there is uniformity of testimony from both
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sides about the nature of surcharged communal tension in that area,” the Court found that the local atmosphere was not conducive to a fair and impartial trial which was a good ground for transfer. The court rejected the contention of the petitioner therein regarding the wild allegations made to the effect that no court in the State of M.P. would be unbiased or impartial for dispensing justice. In the peculiar facts and circumstances of the case, the trial was transferred to an adjoining court. The mere existence of a surcharged atmosphere without there being proof of inability for holding fair and impartial trial cannot be made a ground for transfer of a case. Alleged communally surcharged atmosphere has to be considered in the light of the accusations made and the nature of the crime committed by the accused seeking transfer of his case. It will be unsafe to hold that as and when accusations are made regarding the existence of a surcharged communal atmosphere, the case should be transferred from the area where existence of such surcharged atmosphere is alleged.

9. The position was also examined in *Pal Singh and Anr. v. Central Bureau of Investigation and Ors.*, [2005] 12 SCC 329. In that case, considering the fact that large number of witnesses had been examined and few more witnesses were left to be examined, this Court set aside the order of the High Court transferring the case from one Sessions Court to another. The High Court was, therefore, held to be not justified in entertaining the petition for transfer.

10. In this case, one thing which has to be kept in view is that the Sessions Judge himself has not indicated his disinclination to hear the matter. That is probably because he believes that the mere fact that his brother is known to some political heavyweight cannot stand in his way of discharging judicial function impartially without fear and favour. These are the hallmarks of judicial system. A judicial officer in whatever capacity he may be functioning has to act with the belief that he is not to be guided by any factor other than to ensure that he shall render a free and fair decision which according to his conscience is the right one on the basis of materials placed before him. There can be no exceptions to this imperative, but at the same time there should not be any scope given to any person to go away with the feeling that the Judge was biased, however unfounded the impression may be. The qualities desired of a Judge can be simply stated: “that if he be a good one and that he be thought to be so”. Such credentials are not easily acquired. The Judge needs to have “the strength to put an end to injustice” and “the faculties that are demanded of the historian and the philosopher and the prophet”. A few

A paragraphs from the book "Judges" by David Pannick which are often quoted need to be set out here:

B "The Judge has burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his court. His decisions may well affect the interests of individuals and groups who are not present or represented in court. If he is not careful, the judge may precipitate a civil war. Or he may accelerate a revolution. He may accidentally cause a peaceful but fundamental change in the political complexion of the country.

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C Judges today face tribulations, as well as trials, not contemplated by their predecessors. Parliament has recognized the pressures of the job by providing that before the Lord Chancellor recommends anyone to the Queen for appointment to the Circuit Bench, the Lord Chancellor 'shall take steps to satisfy himself that the person's health is satisfactory'. This seems essential in the light of the reminiscences of Lord Roskill as to the mental strain which the job can impose. Lord Roskill added that, in his experience, 'the workload is intolerable: seven days a week, 14 hours a day'

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E He (judge) is a symbol of that strange mixture of reality and illusion, democracy and privilege, humbug and decency, the subtle network of compromises, by which the nation keeps itself in its familiar shape". (See *Brij Mohan Lal v. Union of India and Ors.*, [2002] 5 SCC 1)

F 11. We are sure that the present Sessions Judge would have acted in the true sense of a judicial officer. But nevertheless to ensure that justice is not only done, but also seen to be done and the peculiar facts of the case, we feel that it will be appropriate if the High Court transfers the case to some other Sessions Court in Raipur itself. We make it clear that the transfer shall not be construed as casting any aspersion on the Learned Sessions Judge.

G The Trial Court before whom the trial is to continue should ensure that the trial is completed by the end of May, 2007. Needless to say, the parties shall co-operate in the completion of the trial within the said time.

12. The appeal is accordingly disposed of.

H D.G.

Appeal disposed of.