

SURENDERA PRATAP SINGH

v.

STATE OF U.P. AND ORS.

(Transfer Petition (Crl.) No. 535 of 2008)

SEPTEMBER 15, 2010

[ALTAMAS KABIR AND A.K. PATNAIK, JJ.]

Code of Criminal Procedure, 1973 – s. 406 – Charge-sheet u/ss. 307 and 302 IPC against four accused including an MLA belonging to party in power in the State – State filing application for withdrawal of the criminal cases against the accused-MLA – Transfer petition – Seeking transfer of criminal case from one State to another State – Apprehending that perspective of the prosecution might get polluted – Held: In the facts and circumstances of the case, the apprehension of the complainant is justified – In order to do fair justice to all the parties, the trial directed to be transferred to another State – Penal Code, 1860 – ss. 307 and 302.

The petitioner lodged an FIR against four persons including respondent No. 2 (an MLA) alleging that they had murdered the brother of the petitioner. Three accused except respondent No. 2, were arrested. The Investigating Agency submitted the charge-sheet against all the accused u/ss. 307 and 304 IPC. The Magistrate issued non-bailable warrant against respondent No. 2, but the same was never executed. The investigation of the case was transferred to C.B.C.I.D. by the High Court at the behest of respondent No. 2. Thereafter, Government of Uttar Pradesh passed an order for withdrawal of eight cases against respondent No. 2. The Public Prosecutor moved an application u/s. 321 Cr.P.C. for withdrawal of the cases. The petitioner filed instant transfer petition seeking transfer of the case to some

A other State. The Supreme Court by an interim order stayed the proceedings before the Magistrate.

Allowing the petition, the Court

B HELD: 1.1 While the arrest of the petitioner may have been stayed by the High Court, the circumstances in which the alleged incident had occurred, coupled with the fact that the Respondent No.2 was returned as an MLA in the same elections, does to some extent justify the apprehension of the petitioner that the perspective of the prosecution may become polluted. There is no getting away from the fact that the Respondent No.2 is an MLA and that too belonging to the present dispensation. Since justice must not only be done but must also seem to be done, this case is an example where the said idiomatic expression is relevant. [Para 11] [914-F-H] [915-A]

D 1.2 In order to do fair justice to all the parties, the trial should be held outside the State of Uttar Pradesh and, accordingly, the transfer petition is allowed and the matter is directed to be transferred to the High Court of E Madhya Pradesh which shall decide the place and the Court before which the trial may be conducted. [Para 12] [915-B-C]

F ORIGINAL JURISDICTION : Transfer Petition (Criminal) No. 535 of 2008.

Shankar Divate for the Petitioner.

G S.K. Dwivedi, AAG, T.N. Singh, Rajeev Dubey, Kamendra Mishra. Kavin Gulati, Sanjay Visen, J.K. Mishra and Shekhar Kumar for the Respondents.

The Judgment of the Court was delivered by

H **ALTAMAS KABIR, J.** 1. This Transfer Petition has been filed by one Surendra Pratap Singh, whose brother Raghvendra Pratap Singh, a practising Advocate of Pratapgarh, U.P., was

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murdered on 24th June, 2005. On the basis of the First Information Report lodged by the Petitioner on the same day at 9.30 p.m. at Antu Police Station, Case Crime No.19 of 2005 was registered against one Brijesh Mishra, MLA, his brother, Mahesh Mishra and associates, Hari Shankar and Gopi. During investigation, the Investigating Agency arrested three out of four accused persons, namely, Mahesh Mishra, Hari Shankar and Gopi, but did not arrest Brijesh Mishra, who was an MLA of the Bahujan Samaj Party. The Investigating Agency submitted charge-sheet No.79 of 2005 against all the accused persons under Sections 307 and 302 IPC in the Court of Chief Judicial Magistrate, Pratapgarh, wherein Brijesh Mishra was shown to be an absconder. On 24th August, 2005, the learned Magistrate took cognizance of the case and issued non-bailable warrant against the said Brijesh Mishra, which apparently was never executed.

2. On 15th September, 2005, the said Brijesh Mishra, who has been made Respondent No.2 herein, applied to the State Government for transfer of investigation from the local police to the C.B.C.I.D., but the same was rejected by the Principal Home Secretary on 15th September, 2005. However, on a Writ Petition filed by the said Respondent No.2, Brijesh Mishra, being W.P. No.4411 of 2005, the High Court gave a direction to the C.B.C.I.D. on 29th November, 2005, to investigate further into the case and to submit a report to the Magistrate within a reasonable time. The Magistrate was directed thereafter to deal with the said reports in accordance with law.

3. On 14th March, 2008, the Petitioner questioned the investigation conducted by Shri Sunil Kumar Saxena, Additional S.P., C.B.C.I.D., Kanpur Division, alleging that he was influencing the prosecution witnesses to change their statements in favour of the accused persons. Ultimately, the said Sunil Kumar Saxena submitted his final report on 14th March, 2008, indicating that there were differences in the charge-sheet which had been filed by the local police and the

A investigation conducted by the C.B.C.I.D. and requested that appropriate action be taken on account of the differences between the two reports.

B 4. Subsequent thereto, on 22nd August, 2008, the Legal Remembrancer wrote to the District Magistrate, Pratapgarh regarding withdrawal of 8 cases against the Respondent No.2 which had been listed in his letter. Within a span of six days of the said letter being sent, on 28th August, 2008, an order was passed by the Chief Secretary, Government of U.P., for withdrawal of the said cases without waiting for any response from the District Magistrate, Pratapgarh, and without assigning any reason for such an order. Immediately thereafter, on 29th August, 2008, the Assistant Public Prosecutor moved an application before the Magistrate under Section 321 Cr.P.C. for withdrawal of the cases, but before anything further could be done on the said application, further proceedings before the Chief Judicial Magistrate, Pratapgarh were stayed by this Court on 12th December, 2008.

E 5. Learned counsel appearing for the Petitioner submitted that the aforesaid facts would clearly reveal that the investigating agencies, in connivance with the State Government, wanted to shield Brijesh Mishra Saurabh from prosecution in connection with the complaint filed by the Petitioner herein. It was submitted that in such circumstances there was a genuine apprehension in the mind of the complainant, who was the brother of the deceased, that the deceased would not receive free and fair justice within the State of Uttar Pradesh.

G 6. As against the above, Mr. Altaf Ahmad, learned Senior Advocate appearing for the Respondent No.2, Brijesh Mishra Saurabh, contended that the allegations made against the investigating authorities and the State Government were wholly unjustified and various incorrect submissions have been made on behalf of the Petitioner to prejudice the mind of the court into passing a favourable order on the transfer petition.

H 7. Learned counsel submitted that deliberate mis-

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statements had been made to show the Respondent No.2 in a bad light. Although, the arrest of the Respondent No.2 had been stayed by the High Court by its order dated 9.9.2005 in Writ Petition No.4411/05 filed by the said Respondent, which order is still in force, it had been made to appear that the Respondent No.2 was avoiding arrest and was an absconder. Learned counsel incidentally submitted that the aforesaid writ petition had been filed by the Respondent No.2 for the investigation to be transferred to the CBI so that the truth of allegations could be verified. Learned counsel submitted that the High Court, in fact, by its order dated 18th August, 2005, directed the Respondent No.2 to approach the State Government for transfer of the case to the C.B.C.I.D. and for police protection. It was submitted that the Respondent No.2 was not arrested in connection with the case on account of the order passed by the High Court staying his arrest and not because he was being favoured either by the investigating agency or the State Government. Learned counsel further urged that the Respondent No.2 was an M.L.A. of the Bahujan Samaj Party at the relevant time, and hence, no use of political clout could be said to have been used by the Respondent No.2 in preventing his arrest in connection with the case. In fact, the party to which the Respondent No.2 belonged came to power in Uttar Pradesh only on 11th May, 2007, almost two years after the commission of the alleged offence.

8. It was then submitted that as far as the application made on behalf of the State Government on 29th August, 2008, under Section 321 Cr.P.C. for withdrawing Case No.119/05 is concerned, it was submitted that it was the Government which had taken the decision to withdraw the cases and it is the Petitioner who had suppressed the relevant facts relating to the different cases and the Government's decision to withdraw the same.

9. It was finally submitted that the materials on record did not support the contention of the Petitioner for transfer of the

A case for trial outside the State of Uttar Pradesh.

10. On behalf of the State it was contended that the facts as revealed did not make out a case for transfer of the case outside the State of Uttar Pradesh. It was submitted that two investigating agencies had exonerated the Respondent No.2 from the allegations made against him and had filed report in final form against him. Mr. Dipankar Gupta, learned Senior Advocate, appearing on behalf of the State of Uttar Pradesh, adopted the submissions made on behalf of the Respondent No.2. Mr. Gupta submitted that except for wild allegations made against the investigating authorities and the officials of the State Government, nothing substantial has been disclosed from the submissions made on behalf of the Petitioner which would indicate that either the investigating agencies or the prosecuting agency was in any way biased in favour of the Respondent No.2. On the other hand, upon a fair investigation undertaken by two separate agencies, which included the C.B.C.I.D., it had been found that the Respondent No.2 was not in any way connected with the alleged incident of 24th June, 2005. In fact, at the relevant time, the party to which he belonged was not in power which would enable him to influence the course of investigation. Mr. Gupta submitted that no interference was called for with the investigation reports submitted both by the local police as also by the C.B.C.I.D., and the Transfer Petition was, therefore, liable to be dismissed.

11. We have carefully considered the submissions made on behalf of the respective parties. While the arrest of the Petitioner may have been stayed by the High Court, the circumstances in which the incident had occurred on 24th June, 2005, coupled with the fact that the Respondent No.2 was returned as an MLA in the same elections, does to some extent justify the apprehension of the Petitioner that the perspective of the prosecution may become polluted. There is no getting away from the fact that the Respondent No.2 is an MLA and that too belonging to the present dispensation. Since

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justice must not only be done but must also seem to be done, this case, in our view, is an example where the said idiomatic expression is relevant. A

12. It would not be proper on our part to dilate on this question further during the pendency of the trial. We are, however, of the view that in order to do fair justice to all the parties, the trial should be held outside the State of Uttar Pradesh and, accordingly, we allow the Transfer Petition and direct that the matter be transferred to the High Court of Madhya Pradesh which shall decide the place and the Court before which the trial may be conducted. B C

13. The Transfer Petition is, therefore, allowed in the aforesaid terms. There will be no order as to costs.

K.K.T

Transfer petition allowed. D