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RAVINDRA PAL SINGH

v.

SANTOSH KUMAR JAISWAL & ORS.
(TRANSFER PETITION (CRIMINAL) NO. 222 OF 2010)

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MARCH 17, 2011

[B. SUDERSHAN REDDY AND SURINDER SINGH
NIJJAR, JJ.]

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CODE OF CRIMINAL PROCEDURE, 1973:

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s. 406 – Transfer petition – Complaint against police officials for killing a man in an alleged fake encounter in Dehradun – Investigation entrusted to CBI – Father of deceased seeking transfer of case to Ghaziabad/Lucknow – Held : It is necessary to ensure that there is no possibility of any undue influence being exerted by the respondents on the prosecution – The complainant has made a serious grievance about the manner in which the prosecution has been conducted – Prayer for transfer of the case to Ghaziabad/Lucknow has been resisted by the respondent expressing similar apprehension about undue influence being exerted by the petitioner – Case is, therefore, transferred from the Court of Special Judicial Magistrate, CBI, Dehradun to the Court of Special Judge, CBI, Delhi.

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The son of the transfer petitioner was stated to have been killed in a fake encounter by the police in Dehradun. The petitioner got registered an FIR against the respondents-police officials, but as there was no progress, the investigation was entrusted to CBI.

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However, the police officials were stated to have continued to exert influence on investigation. It was alleged by the petitioner that he was threatened by the local police and he could not even engage an advocate to file an application for cancellation of bail of the

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respondents.

Disposing of the petition, the Court

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HELD:

In the peculiar facts and circumstances of the case, it is necessary to ensure that there is no possibility of any undue influence being exerted by the respondents on the prosecution. The complainant has made a serious grievance about the manner in which the prosecution has been conducted. The Court would refrain from recording any firm opinion on the issue, at this stage. However, at the same time it must be ensured that the prosecution witnesses are able to depose without any fear of repercussions. This can only be ensured by transferring the criminal case out of the area in which no allegations could be made of undue influence against the prosecution. The prayer made by the petitioner was for transfer of the case to the CBI Court at Ghaziabad/Lucknow. However, the accused have also expressed similar apprehension about undue influence being exerted by the petitioner, if the case is transferred to the Court at Ghaziabad/Lucknow. Therefore, purely in the interest of justice it is deemed appropriate to transfer the case to Delhi. Case Crime No. 3 of 2010 *State through CBI vs. S.K. Jaiswal* is transferred from the Court of Special Judicial Magistrate, CBI, Dehradun to the Court of Special Judge, CBI, Delhi, for trial or its assignment to an appropriate court, as the Special Judge may consider it fit and proper. [para 6-7] [976-B-F]

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CRIMINAL ORIGINAL JURISDICTION : Transfer Petition
(Criminal) No. 222 of 2010.

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Petition Under Section 46 Code of Criminal Procedure.

A.T. Raom and A. Subba Rao for the Petitioner.

Gopal Subramaniam, S.G. P.P. Malhotra, ASG, Sushil

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A Kumar, Brijender Chahar, Rajat Khattry, Vinay Arora, Aditya Kumar, Vivek Kochar, S.S. Rawat, Sanjay Jain, Shweta Verma, Aman Ahluwalia, Subramonium Prasad and Arvind Kumar Sharma for the Respondents.

B The Judgment of the Court was delivered by

C **SURINDER SINGH NIJJAR, J.** 1. This transfer petition has been filed by the father of Ranbir Singh (hereinafter referred to as 'the deceased'), who according to the prosecution, was killed by the respondents in a fake encounter. On 2nd of July, 2009, the deceased who was a MBA student had gone to Dehradun in search of a job and stayed at Digambar Jain Mandir, Dharmasala. On 3rd of July, 2009, he was arrested by the Police of Police Station Dalanwala at around 1312 hrs. According to the prosecution, this can be seen from the record of Global Positioning System (GPS) log of the vehicle of SHO, Dalanwala. At around 1530 hrs on the same day, the deceased was killed in a cold blooded manner by pumping 29 bullets into him by the police officials. It is the case of the prosecution that Santosh Kumar Jaiswal (A1) had fired 2 bullets from his service revolver, Neeraj Kumar, SI (A4) fired 2 bullets from his revolver; Chandra Mohan Singh Rawat (A6) fired 6 bullets from his pistol; Gopal Dutt Bhatt (A2) fired 7 bullets from his pistol; Nitin Chouhan (A5) fired 6 bullets from his pistol; Rajesh Bisht (A3) fired 7 bullets from his pistol and Ajit Singh (A7) fired 2 bullets from AK-47. It is also alleged that 5 bullets were fired by police officials from the 9 mm Pistol, which was subsequently planted by them on the deceased to camouflage the fake encounter into a real encounter. The CFSL Report has confirmed that 29 bullets were fired at the deceased. Seventeen bullets hit him from a very close range as there was blackening surrounding the wounds. It was also opined that atleast 9 bullets were fired at the deceased from actual distance of 3 feet. The father of the deceased was informed by media persons that his son had been shot down by the police at Dehradun. He reached Dehradun in the night itself. When he tried to contact the police

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officials, he was threatened by one of the police officers, namely, Ajay Singh C.O. Dalanwala that if he tries to interfere in the matter, he would also be eliminated like his son. On 4th July, 2009, the complainant went to the hospital where he was again threatened by another police officer, namely Mr. Tamta. Thereafter, the complainant took the body of his son to Meerut to perform his last rites. After performing the last rites of his son, the complainant came back to Dehradun and got registered FIR No.101 of 2009 dated 6th July, 2009. As the investigation was not progressing due to the influence of the local police, the matter was entrusted to the CBI for investigation. However, the police officials continue to exert influence even on the investigation which was being conducted by the CBI.

2. In order to cover up the fake encounter, the deceased had been made an accused in a case of theft and dacoity by the police officials. It was alleged that Ranbir Singh and his co-accused were planning to commit robbery in the house of one Kavita Saxena situated at Madhuban Enclave, Mohini Road, Dehradun. Ranbir Singh, the deceased, was suspected to be in conspiracy with his friend Shekhar Tyagi, Ram Kumar, Ashok Panwar and Amit Bhatnagar. In order to commit the robbery, the deceased and his friends had procured and were in possession of lethal weapons. The deceased and his companions were said to be in possession of one katta. They had reached Dehradun on 2nd July, 2009. They had planned to commit the robbery on 3rd July, 2009. It was further the case of the respondents that the deceased and his friends had stayed at Flat No.9 of Jain Dharamshala, Gandhi Road, Dehradun on the night of 2nd July, 2009. On 3rd July, 2009, they left the Jain Dharamshala at about 1230 hrs. At that time, the deceased and his friend were carrying a black bag containing katta, ropes and "cello tape" etc. on a motor cycle. They were being followed by Ram Kumar. Ashok had been sent to see the lane in which the house of Kavita Saxena was located. They were waiting for Ashok to come back with the

A information at a place near Gurudwara on Mohini road. At
about 1245 hrs. they were met by G.D. Bhatt, S.I. Incharge
Araghar Chowki who was on routine patrol checking. Whilst
respondent No. 2 was checking the deceased and his friends,
an altercation broke out between them. In the altercation, the
B deceased attacked respondent No. 2 and snatched his service
pistol. At that stage, a passerby, Anjum Parvej Khan intervened
and fired a shot in the air from his licenced pistol. The deceased
and his companion fled away on a motor cycle along with
service pistol which they had stolen from S.I. G.D. Bhatt.
C According to the respondents, the deceased was killed in an
encounter with the police personnel in cross firing.
Consequently, an FIR was registered against the deceased and
his associates on 3rd July, 2009 under Section 394, IPC.
D Another FIR was also registered under Section 307 IPC
against the deceased and his associates. The motor cycle was
also recovered from the place where the deceased was killed
in the encounter. According to the respondents, even the motor
cycle had earlier been stolen by the deceased and his
associates. Subsequently, chargesheet had been filed against
E the deceased and his associates under Sections 120B, 392,
333 and 411 IPC.

3. It is the case of the respondents that the transfer petition
is wholly misconceived. The investigation has been transferred
to the CBI. The CBI has submitted a closure report in the case
F registered against the deceased and his companion. Clearly,
therefore, the police officers cannot be said to be exerting any
influence on the proceedings in court. Once the investigation
has been entrusted to the CBI, the local police has no further
role to play. Further more, answering respondents are no longer
G posted at Dehradun. Even otherwise the respondents are not
high officials and cannot exert any influence on the State. One
of the respondents is an Inspector. Five respondents are Sub-
Inspectors and the rest are in the rank of Constables. The
impartiality of the State is also apparent that all the respondents
H have been transferred out of Dehradun.

4. The justification given by the respondents is, however, A
controverted by the complainant illustrating the influence wielded
by the respondents. It is highlighted that even the transfer of the
case to the CBI has made no difference. In fact, none of the
police officers were even suspended. All the accused had
managed to create such circumstances which led to the High B
Court granting bail to the respondents. The complainant
apprehends that the prosecuting agency at Dehradun will not
properly conduct the case. It will not be able to resist the
influence of the accused. The influence of the accused is such C
that the complainant was not able to even engage an advocate
to file application for cancellation of bail in the High Court
against the respondents. Even the CBI counsel was deliberately
absent when the application for bail was heard by the High court
only to help the respondents.

5. We have heard the learned counsel for the parties at D
length. We are of the considered opinion that the
apprehensions expressed by the complainant, father of the
deceased, cannot be said to be unfounded. Mr. Sushil Kumar,
learned counsel appearing for the respondents submitted that E
the deceased and his friends were in possession of lethal
weapons at a very crucial and sensitive time. According to the
learned counsel, on that very day the President of India was due
to visit Dehradun, therefore, there was very intensive checking.
At the relevant time, when the deceased and his friends were F
stopped for checking they became nervous. There was a scuffle
between the deceased and the police and in the process, the
deceased snatched the service revolver from the Inspector G.D.
Bhatt. As a consequence, there was a genuine encounter in
which unfortunately the son of the complainant was hit by some G
bullets in the cross fire. Learned counsel further submitted that
merely because the accused in the case are police officials
would not lead to a presumption that there would not be a fair
trial in the State of U.P. He submitted that all the concerned
police officials have been transferred out of Dehradun. They
have in fact been put on non active duties. In the event, the case H

A is transferred out of State of U.P. it would cause injustice to respondents. According to the learned counsel the respondents are low ranking police officials who would not be able to bear the expenses in defending themselves at a court which is situated a long distance away.

B 6. In our opinion, given the peculiar facts and circumstances of this case, it is necessary to ensure that there is no possibility of any undue influence being exerted by the respondents on the prosecution. The complainant has made a serious grievance about the manner in which the prosecution has been conducted. We would refrain from recording any firm opinion on the issue, at this stage. However, at the same time it must be ensured that the prosecution witnesses are able to depose without any fear of repercussions. This can only be ensured by transferring the criminal case out of the area in which no allegations could be made of undue influence, against the prosecution.

E 7. The prayer made by the petitioner was for transfer of this case to the CBI Court at Ghaziabad/Lucknow. However, the accused had expressed similar apprehension about undue influence being exerted by the petitioner, if the case is transferred to the Court at Ghaziabad/Lucknow. Therefore, purely in the interest of justice, we deem it appropriate to transfer the case to Delhi. Case Crime No. 3 of 2010 titled State through CBI vs. S.K. Jaiswal is transferred from the Court of Special Judicial Magistrate, CBI, Dehradun to the Court of Special Judge, CBI, Delhi, for trial or its assignment to an appropriate court, as the Special Judge may consider it fit and proper.

R.P.

Transfer Petition disposed of.